

Memorandum 2002-46

Reorganization of Discovery Statute (Draft of Tentative Recommendation)

Attached is a draft of a tentative recommendation proposing a nonsubstantive reorganization of the civil discovery provisions. The Commission needs to review the draft and determine whether to approve a tentative recommendation or continue to refine the proposal.

The draft does not include conforming revisions, the text of the repealed sections, or a disposition table. Preparation of these items should be fairly mechanical.

Staff notes in the draft identify a number of issues. Unless someone raises one of these points, we plan to proceed as suggested in the notes and do not intend to discuss these issues at the meeting.

Two drafting decisions warrant discussion at the meeting. These relate to (1) good faith declarations, and (2) imposition of monetary sanctions.

GOOD FAITH DECLARATION

Numerous discovery provisions require a moving party to submit a declaration “stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.” This seems unnecessarily repetitive.

To address this problem, the attached draft would revise each of these provisions to refer to “a declaration under Section 2023.060.” Section 2023.060 would provide:

Code Civ. Proc. § 2023.060. Good faith declaration

2023.060. (a) A declaration in support of a motion satisfies this section if it states facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

(b) A declaration that satisfies subdivision (a) may be known as a “good faith declaration.”

Comment. Section 2023.060 is added for drafting convenience. The language in subdivision (a) is drawn from numerous

provisions. See former §§ 2017(c), (d), 2019(b), 2024(e), 2025(e), (g), (i), (j), (n), (o), (q), 2028(d), 2030(e), (l), (m), 2031(f), (m), 2032(c), (d), (h), (j), 2033(e), (l), 2034(e), (i), (k), (l). To eliminate redundancy, these have been revised to refer to Section 2023.060. See §§ 2017.030(a), 2017.040(a), 2019.040(b), 2024.050(a), 2025.070(a), 2025.090(c), 2025.120(a), 2025.150(b)(2), 2025.210(b), 2025.230(g), 2025.240(e), 2028.040(b), 2028.050(b), 2030.090(a), 2030.190(b), 2030.200(b), 2031.060(a), 2031.160(b), 2032.070(a), 2032.090(b), 2032.180(a), 2032.210(a), 2033.080(a), 2033.170(b), 2034.060(a), 2034.170(b), 2034.190(c), 2034.220(c).

We selected this approach for three reasons: (1) it would provide a readily accessible reference to the provision detailing the contents of the declaration, (2) it would provide a short descriptive name for the type of declaration required, and (3) it would closely track the existing statutory scheme, while eliminating unnecessary verbiage.

A more radical alternative would be to replace all of the existing references with a single provision stating “Except as otherwise provided by statute, any motion for discovery, motion for a protective order, motion to compel, or other motion pursuant to this chapter shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.” That might be the most elegant solution, but the staff is not inclined to incorporate it in this proposal. We doubt that it would be a substantive change, but that is not as obvious as with the approach used in the draft. Stakeholders might therefore be less likely to accept it than the revisions shown in the draft, and that reluctance might jeopardize enactment of the entire reform.

Does the Commission agree with this assessment? Is the staff’s drafting decision acceptable, or would the Commission prefer to follow another approach?

MONETARY SANCTIONS

A similar problem exists with regard to imposition of monetary sanctions. Numerous provisions state that “[t]he court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a [specified motion], unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.”

To reduce unnecessary verbiage, we would revise each of these provisions to read: “Except as provided in Section 2023.040, the court shall impose a monetary sanction under Article 7 against any party, person, or attorney who unsuccessfully makes or opposes a [specified motion].” Section 2023.040 would provide:

§ 2023.040. Circumstances in which monetary sanction is not required

2023.040. Notwithstanding any other provision of this chapter, the court is not required to award a monetary sanction under this chapter if it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

Comment. Section 2023.040 is added for drafting convenience. The language is drawn from numerous provisions. See former §§ 2017(c), (d), 2019(b), 2024(e), 2025(e), (g), (i), (j), (n), (o), (q), 2028(d), 2030(e), (k)-(m), 2031(f), (l)-(n), 2032(c), (g), (h), (j), 2033(e), (l), 2034(e), (i), (k), (l). To eliminate redundancy, these have been revised to refer to Section 2023.040. See §§ 2017.030(b), 2017.040(b), 2019.040(c), 2024.050(c), 2025.070(d), 2025.090(d), 2025.120(d), 2015.130, 2025.140, 2025.150(c), 2025.210(f), 2025.230(h), 2025.240(f), 2028.040(c), 2028.050(c), 2030.090(d), 2030.180(c), 2030.190(d), 2030.200(d), 2031.060(d), 2031.150(c), 2031.160(d), 2031.170(b), 2032.060(c), 2032.070(b), 2032.140(f), 2032.180(b), 2032.210(b), 2033.080(d), 2033.170(d), 2034.060(d), 2034.170(g), 2034.210, 2034.240.

The staff selected this approach for reasons similar to those underlying its treatment of the language regarding good faith declarations. Does the Commission agree with the approach, or would it prefer to handle the matter differently?

Respectfully submitted,

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CALIFORNIA LAW REVISION COMMISSION

Staff Draft TENTATIVE RECOMMENDATION

Civil Discovery: Nonsubstantive Reform

September 2002

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN _____.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

Most of the key statutory provisions governing civil discovery (Code Civ. Proc. §§ 2016-2036) are extremely long. The Law Revision Commission recommends a nonsubstantive reorganization of these provisions into short sections that closely track the existing language and sequencing. This would facilitate amendment and sound development of the law, while also making the statute more user-friendly.

This recommendation was prepared pursuant to Resolution Chapter ___ of the Statutes of 2002.

CIVIL DISCOVERY: NONSUBSTANTIVE REFORM

1 The statutory provisions governing civil discovery¹ are logically organized, but
2 most of the key sections are extremely long.² That conflicts with the drafting
3 principle that short sections are preferable to long ones, a principle adopted long
4 ago by the California Code Commission,³ and also approved by the Legislature,⁴
5 Legislative Counsel,⁵ and the Law Revision Commission.⁶ To eliminate the
6 problems associated with long sections, the Commission recommends a
7 nonsubstantive reorganization of the civil discovery provisions, closely tracking
8 the existing statutory language but dividing the provisions into short sections
9 grouped in articles according to subject matter.

10 Advantages of Short Sections

11 Short sections have a number of important advantages. The full text of a section
12 must be set forth in any bill amending the section,⁷ so a bill to amend a long
13 section is lengthy even if it proposes only a minor revision.⁸ This not only entails
14 printing costs, but also forces legislators, consultants, lobbyists, stakeholders, and
15 other interested persons to review material unrelated to a proposed reform, wasting
16 their time and potentially injecting additional issues into a simple proposal. Short
17 sections avoid these problems.

18 The use of short sections also leads to better legislation, because it facilitates
19 insertion of new statutory material. The Legislature can readily add new language
20 where logically appropriate, unhampered by constraints such as overlong
21 paragraphs and lack of available subparts. This promotes clear and straightforward
22 drafting, as opposed to confusing and convoluted provisions.⁹

1. Code Civ. Proc. §§ 2016-2036. Unless otherwise specified, all further statutory references are to the Code of Civil Procedure.

2. For example, Section 2025 consists of subdivisions (a)-(v), most of which are divided into multiple paragraphs. See also Sections 2020, 2030, 2031, 2032, 2033, 2034.

3. Drafting Rules and Principles for Use of California Code Commission Draftsmen, at 4.

4. Joint Rule 8.

5. Legislative Drafting Manual (1975), at 26-28.

6. Commission Staff Memorandum 85-64 (May 31, 1985).

7. Joint Rule 10.

8. E.g., correction of the spelling of “meritorious” in Section 2023(a)(5), or elimination of the accidental repetition of “the set number, and the identity of the responding party” in Section 2033(c)(4).

9. See, e.g., the first sentence of the first paragraph of Section 2034(i)(2), which reads:

A party desiring to depose any expert witness, other than a party or employee of a party, who is either (A) an expert described in paragraph (2) of subdivision (a) except one who is a party or an employee of a party, (B) a treating physician and surgeon or other treating health care practitioner who is to be asked during the deposition to express opinion testimony, including opinion or factual testimony regarding the past or present diagnosis or prognosis made by the practitioner or the reasons for a particular treatment decision made by the practitioner, but not including testimony requiring only the reading of words and symbols contained in the relevant medical record or, if those

1 Perhaps most importantly, short sections enhance readability for courts and
2 practitioners, assisting them in interpreting and following the law. If a statute is
3 organized into short sections, persons can easily locate pertinent provisions by
4 using tables of contents, instead of having to read lengthy sections containing
5 much irrelevant material. Courts and practitioners can also refer to key language
6 by section or subdivision, instead of by cumbersome monikers such as “the first
7 sentence of the first paragraph of Section 2032(h).” These effects promote efficient
8 and effective advocacy and decision-making. The civil discovery provisions
9 should be reorganized into short sections so as to attain these and the other
10 advantages of that drafting technique.

11 **Methodology of the Proposed Reform**

12 The proposed legislation would closely track existing law, minimizing disruption
13 to courts and practitioners. The civil discovery provisions would be reorganized
14 into a chapter consisting of twenty articles. In general, each article would contain
15 the substance of an existing section, but would be divided into a series of short
16 sections. These sections would be numbered to correspond to the section from
17 which they derived. Thus, the substance of Section 2025 (oral deposition inside
18 California) would be divided into Sections 2025.010, 2025.020, 2025.030, etc.
19 which would be grouped into an article entitled “Oral Deposition Inside
20 California.”

21 To further minimize disruption, the provisions would remain largely in the same
22 order as under existing law.¹⁰ For example, “Article 13. Written Interrogatories”
23 would precede “Article 14. Inspection and Production of Documents, Tangible
24 Things, Land, and Other Property,” which would precede “Article 15. Physical or
25 Mental Examination.” Likewise, within each article, the substance generally, but
26 not always, would be covered in the same order as in the existing provisions.

27 The proposed legislation would also use much of the same wording as in the
28 existing provisions. Some revisions would be made to eliminate redundancies. In
29 particular, the legislation would eliminate repetitive language regarding imposition
30 of monetary sanctions,¹¹ as well as unnecessary repetition in referring to a
31 “declaration stating facts showing a reasonable and good faith attempt at an

words and symbols are not legible to the deponent, the approximation by the deponent of what those words or symbols are, or (C) an architect, professional engineer, or licensed land surveyor, who was involved with the original project design or survey for which he or she is asked to express an opinion within his or her expertise and relevant to the action or proceeding, shall pay the expert’s reasonable and customary hourly or daily fee for any time spent at the deposition from the time noticed in the deposition subpoena or from the time of the arrival of the expert witness should that time be later than the time noticed in the deposition subpoena, until the time the expert witness is dismissed from the deposition, whether or not the expert is actually deposed by any party attending the deposition.

10. A few provisions would be relocated to improve organizational clarity. See, e.g., proposed Sections 2016.030 (derived from Section 2021), 2016.040 (derived from Section 2019(e)).

11. See proposed Section 2023.040 & Comment.

1 informal resolution of each issue.”¹² Other revisions would be made to improve
2 grammar or clarity, correct mistakes, and conform to drafting conventions.

3 The Commission has taken care to ensure that all of these revisions are strictly
4 nonsubstantive. The intent of this proposal is not to alter existing rights and duties
5 relating to civil discovery. Rather, the reform would preserve existing procedures,
6 but make the law more clear and accessible, and promote sound development of
7 the law.

12. See proposed Section 2023.060 & Comment.

Contents

Heading of Title 3 (commencing with Section 1985) (amended)	1
Heading of Chapter 2 (commencing with Section 1985) (repealed)	1
Heading of Chapter 3 (commencing with Section 2002) (repealed)	1
Heading of Title 4 (commencing with Section 2002) (added)	1
Heading of Article 1 (commencing with Section 2002) (repealed)	1
Heading of Chapter 1 (commencing with Section 2002) (added)	1
Heading of Article 2 (commencing with Section 2009) (repealed)	2
Heading of Chapter 2 (commencing with Section 2009) (added)	2
Code Civ. Proc. §§ 2016-2036 (repealed). Discovery	2
Code Civ. Proc. §§ 2016.010-2036.050 (added). Discovery	2
CHAPTER 3. DISCOVERY	2
Article 1. General Provisions	2
§ 2016.010. Short title	2
§ 2016.020. Definitions	2
§ 2016.030. Written stipulations regarding depositions and discovery	3
§ 2016.040. Service by mail	3
§ 2016.050. Computation of time when last day falls on Saturday, Sunday, or holiday	3
§ 2016.060. Application of chapter to discovery in aid of enforcement of money judgment	3
Article 2. Scope of Discovery	4
§ 2017.010. Scope of discovery	4
§ 2017.020. Discovery of insurance coverage	4
§ 2017.030. Discovery concerning plaintiff's sexual conduct	4
§ 2017.040. Court order limiting scope of discovery	5
Article 3. Use of Technology in Conducting Discovery in a Complex Case	5
§ 2017.510. "Technology" defined	5
§ 2017.520. Effect of article	5
§ 2017.530. Use of technology in conducting discovery in complex case	6
§ 2017.540. Use of service provider	7
Article 4. Attorney Work Product	7
§ 2018.010. "Client" defined	7
§ 2018.020. Attorney work product	8
Article 5. Methods and Sequence of Discovery	9
§ 2019.010. Methods of discovery	9
§ 2019.020. Sequence of discovery	9
§ 2019.030. Timing of discovery relating to trade secret	9
§ 2019.040. Restriction on use of discovery methods	9
Article 6. Nonparty Discovery	10
§ 2020.010. Method and process for obtaining discovery from nonparty	10
§ 2020.020. Types of deposition subpoenas	10
§ 2020.030. Application of other code provisions	11
§ 2020.040. Issuance of deposition subpoena	11
§ 2020.050. Deposition subpoena commanding only attendance and testimony of deponent	11
§ 2020.060. Deposition subpoena commanding only production of business records for copying	11
§ 2020.070. Officer for deposition seeking only production of business records for copying	12
§ 2020.080. Compliance with deposition subpoena commanding only production of business records for copying	13
§ 2020.090. Duties of deposition officer	14
§ 2020.100. Deposition subpoena commanding both production of business records and attendance and testimony of deponent	14

§ 2020.110. Service of deposition subpoena	15
§ 2020.120. Witness fees	15
§ 2020.120. Sanctions for disobedience of deposition subpoena	16
Article 7. Sanctions	16
§ 2023.010. Misuses of discovery process	16
§ 2023.020. Sanctions for failure to confer as required	16
§ 2023.030. Other sanctions for misuse of discovery	17
§ 2023.040. Circumstances in which monetary sanction is not required	18
§ 2023.050. Content of request for sanction	18
§ 2023.060. Good faith declaration	18
Article 8. Time for Completion of Discovery	18
§ 2024.010. Completion of discovery	18
§ 2024.020. Discovery cutoff	19
§ 2024.030. Discovery cutoff for expert witness	19
§ 2024.040. Exceptions to discovery cutoff	19
§ 2024.050. Motion to extend or reopen discovery	20
§ 2024.060. Agreement extending discovery cutoff	20
Article 9. Oral Deposition Inside California	20
§ 2025.010. Oral deposition inside California	20
§ 2025.020. Time of service of deposition notice	21
§ 2025.030. Content of deposition notice	21
§ 2025.040. Notice to deponent other than natural person	22
§ 2025.050. Service of deposition notice and related documents	22
§ 2025.060. Place of deposition	23
§ 2025.070. Motion to require party to attend deposition at more distant place	23
§ 2025.080. Time of taking oral deposition	24
§ 2025.090. Noncompliance with requirements for deposition notice	25
§ 2025.100. Effect of deposition notice	25
§ 2025.110. Deposition by remote electronic means	26
§ 2025.120. Motion for protective order	26
§ 2025.130. Sanctions where party giving notice of deposition fails to attend or proceed	27
§ 2025.140. Sanctions where nonparty deponent fails to appear	28
§ 2025.150. Sanctions where party deponent fails to appear	28
§ 2025.160. Deposition officer	30
§ 2025.170. Conduct of deposition	31
§ 2025.180. Deposition recorded by audiotape or videotape	32
§ 2025.190. Waiver of error or irregularity	34
§ 2025.200. Suspension of deposition	34
§ 2025.210. Motion to compel	35
§ 2025.220. Transcription of testimony	36
§ 2025.230. Deponent’s review of transcript	37
§ 2025.240. Deponent’s review of recording	38
§ 2025.250. Certification of transcript	39
§ 2025.260. Sealing of transcript	39
§ 2025.270. Sealing of audiotape or videotape record	40
§ 2025.280. Copy of transcript, videotape, or other recording for nonparty	40
§ 2025.290. Subsequent deposition of same deponent	41
§ 2025.300. Use of deposition testimony	42
Article 10. Oral Deposition Outside California	43
§ 2026.010. Oral deposition in another state or territory of the United States	43
§ 2026.020. Oral deposition in foreign nation	44
Article 11. Deposition by Written Questions	45
§ 2028.010. Deposition by written questions	45
§ 2028.020. Notice of written deposition	45

§ 2028.030. Direct, cross, redirect, and recross questions	46
§ 2028.040. Objections	46
§ 2028.050. Objection based on privilege	46
§ 2028.060. Preview of questions	47
§ 2028.070. Court orders	47
§ 2028.080. Duties of deposition officer	47
Article 12. Deposition in Action Pending Outside California	48
§ 2029.010. Deposition in action pending outside California	48
Article 13. Written Interrogatories	48
§ 2030.010. Written interrogatories to parties	48
§ 2030.020. Time of propounding interrogatories	48
§ 2030.030. Number of interrogatories	49
§ 2030.040. Extra interrogatories	49
§ 2030.050. Declaration in support of extra interrogatories	50
§ 2030.060. Form and contents of interrogatories	51
§ 2030.070. Supplemental interrogatories	51
§ 2030.080. Service of interrogatories	52
§ 2030.090. Motion for protective order	52
§ 2030.100. Form of response to interrogatories	53
§ 2030.110. Completeness of response	53
§ 2030.120. Answer necessitating preparation of compilation, abstract, audit, or summary	54
§ 2030.130. Objection to interrogatory	54
§ 2030.140. Signing of response to interrogatories	54
§ 2030.150. Service of response to interrogatories	55
§ 2030.160. Agreement to extend time for service of response	55
§ 2030.170. Retention of original interrogatories and original response	55
§ 2030.180. Failure to serve timely response	56
§ 2030.190. Motion to compel further response	56
§ 2030.200. Amended answer to interrogatory	57
§ 2030.210. Use of interrogatory answer at trial	58
Article 14. Inspection and Production of Documents, Tangible Things, Land, and Other Property	58
§ 2031.010. Inspection and production of documents, tangible things, land, and other property	58
§ 2031.020. Time of making inspection demand	59
§ 2031.030. Form of inspection demand	59
§ 2031.040. Service of inspection demand	60
§ 2031.050. Supplemental inspection demand	60
§ 2031.060. Motion for protective order	60
§ 2031.070. Response to inspection demand	61
§ 2031.080. Statement of compliance with inspection demand	62
§ 2031.090. Representation of inability to comply with inspection demand	62
§ 2031.100. Objection to inspection demand	62
§ 2031.110. Signing of response to inspection demand	63
§ 2031.120. Service of response to inspection demand	63
§ 2031.130. Agreement to extend time for service of response	63
§ 2031.140. Manner of production	64
§ 2031.150. Retention of original inspection demand and original response	64
§ 2031.150. Failure to serve timely response	64
§ 2031.160. Motion to compel further response to inspection demand	65
§ 2031.170. Motion to compel compliance with inspection demand	66
§ 2031.500. Disclosure of written evidence relating to land boundary or validity of state patent or grant	66
Article 15. Physical or Mental Examination	66

§ 2032.010. “Plaintiff” and “defendant” defined 66

§ 2032.020. Effect of article 67

§ 2032.030. Physical or mental examination 67

§ 2032.040. Demand for physical examination of personal injury plaintiff 67

§ 2032.050. Response to demand for physical examination of personal injury plaintiff 68

§ 2032.060. Failure to respond to demand for physical examination of personal injury plaintiff 68

§ 2032.070. Motion to compel compliance with demand for physical examination after receiving response of personal injury plaintiff 69

§ 2032.080. Retention of original demand for physical examination and original response 69

§ 2032.090. Motion for physical or mental examination 70

§ 2032.100. Order on motion for physical or mental examination 70

§ 2032.110. Alternative procedures and restrictions 71

§ 2032.120. Failure to submit to physical or mental examination 71

§ 2032.130. Failure to produce another for physical and mental examination 71

§ 2032.140. Observation of examination by attorney or representative 71

§ 2032.150. X-rays 72

§ 2032.160. Recording of mental examination 73

§ 2032.170. Delivery of reports to examinee or party who produced examinee 73

§ 2032.180. Failure to deliver report to examinee or party who produced examinee 73

§ 2032.190. Waiver 74

§ 2032.200. Exchange of other reports 74

§ 2032.210. Failure to exchange other reports 75

Article 16. Requests for Admission 75

§ 2033.010. Requests for admission 75

§ 2033.020. Time of making requests for admission 76

§ 2033.030. Number of requests for admission 76

§ 2033.040. Extra requests for admission 76

§ 2033.050. Declaration in support of extra requests for admission 77

§ 2033.060. Form of requests for admission 78

§ 2033.070. Service of requests for admission 78

§ 2033.080. Motion for protective order 79

§ 2033.090. Response to requests for admission 79

§ 2033.100. Answer to request for admission 80

§ 2033.110. Objection to request for admission 80

§ 2033.120. Signing of response to requests for admission 81

§ 2033.130. Service of response to requests for admission 81

§ 2033.140. Agreement to extend time for service of response 81

§ 2033.150. Retention of original requests for admission and original response 82

§ 2033.160. Failure to serve timely response 82

§ 2033.170. Motion to compel further response 83

§ 2033.180. Withdrawal or amendment of admission 83

§ 2033.190. Effect of admission 84

§ 2033.200. Failure to admit fact proven to be true 84

Article 17. Form Interrogatories and Requests for Admission 85

§ 2033.510. Judicial Council to develop form interrogatories and requests for admission 85

§ 2033.520. Form interrogatories for use by victim who has not received complete payment of restitution order 85

§ 2033.530. Procedures for development of form interrogatories and requests for admission 85

§ 2044.540. Procedures for use of form interrogatories and requests for admission 86

Article 18. Simultaneous Exchange of Expert Witness Information 86

§ 2034.010. Application of article 86

§ 2034.020. Simultaneous exchange of information concerning expert trial witnesses 86

§ 2034.030. Time of demanding exchange of expert witness information 87

§ 2034.040. Form and content of demand for exchange of expert witness information 87

§ 2034.050. Service of demand for exchange of expert witness information 87

§ 2034.060. Motion for protective order 87

§ 2034.070. Manner of exchanging expert witness information 88

§ 2034.080. Exchange of reports and writings 89

§ 2034.090. Supplemental expert witness list 89

§ 2034.100. Retention of original demand for exchange of expert witness information and original response 90

§ 2034.110. Deposition of expert witness 90

§ 2034.120. Place of expert witness deposition 90

§ 2034.130. Fee for deposing expert witness 91

§ 2034.140. Other fees associated with deposition of expert witness 92

§ 2034.150. Process for payment of fee for deposing expert witness 92

§ 2034.160. Production of expert 92

§ 2034.170. Motion to set compensation of expert 93

§ 2034.180. Exclusion of expert opinion 94

§ 2034.190. Motion to augment or amend expert witness list or declaration 94

§ 2034.200. Order on motion to augment or amend expert witness list or declaration 95

§ 2034.210. Monetary sanction for unsuccessfully making or opposing motion to augment or amend expert witness information 95

§ 2034.220. Motion to submit tardy expert witness information 96

§ 2034.230. Order on motion to submit tardy expert witness information 96

§ 2034.240. Monetary sanction for unsuccessfully making or opposing motion to submit tardy expert witness information 97

§ 2034.250. Calling expert not previously designated 97

Article 19. Perpetuation of Testimony or Preservation of Evidence Before Filing Action 97

§ 2035.010. Perpetuation of testimony or preservation of evidence before filing action 97

§ 2035.020. Methods of discovery 97

§ 2035.030. Petition 98

§ 2035.040. Service of notice of petition 98

§ 2035.050. Court order 99

§ 2035.060. Use of presuit deposition to perpetuate testimony 99

Article 20. Perpetuation of Testimony or Preservation of Information Pending Appeal 100

§ 2036.010. Perpetuation of testimony or preservation of information pending appeal 100

§ 2036.020. Methods of discovery 100

§ 2036.030. Motion for leave to conduct discovery pending appeal 100

§ 2036.040. Court order 100

§ 2036.050. Use of deposition to perpetuate testimony pending appeal 101

PROPOSED LEGISLATION

1 ☞ **Staff Note.** This draft does not include conforming revisions. Preparation of the conforming
2 revisions should be straightforward. We would include these before circulating a tentative
3 recommendation.

4 **Heading of Title 3 (commencing with Section 1985) (amended).**

5 SEC. _____. The heading of Title 3 (commencing with Section 1985) of Part 4 of
6 the Code of Civil Procedure is amended to read:

7 TITLE 3 . OF THE MEANS OF PRODUCTION OF EVIDENCE

8 **Heading of Chapter 2 (commencing with Section 1985) (repealed).**

9 SEC. _____. The heading of Chapter 2 (commencing with Section 1985) of Title 3
10 of Part 4 of the Code of Civil Procedure is repealed.

11 ~~CHAPTER 2. MEANS OF PRODUCTION~~

12 **Heading of Chapter 3 (commencing with Section 2002) (repealed).**

13 SEC. _____. The heading of Chapter 3 (commencing with Section 2002) of Title 3
14 of Part 4 of the Code of Civil Procedure is repealed.

15 ~~CHAPTER 3. MANNER OF PRODUCTION~~

16 **Heading of Title 4 (commencing with Section 2002) (added).**

17 SEC. _____. A heading is added immediately preceding Section 2002 of the Code
18 of Civil Procedure, to read:

19 TITLE 4 . OF THE MANNER OF PRODUCTION OF
20 EVIDENCE

21 **Heading of Article 1 (commencing with Section 2002) (repealed).**

22 SEC. _____. The heading of Article 1 (commencing with Section 2002) of Chapter
23 3 of Title 3 of Part 4 of the Code of Civil Procedure is repealed.

24 ~~Article 1. Mode of Taking the Testimony of Witnesses~~

25 **Heading of Chapter 1 (commencing with Section 2002) (added).**

26 SEC. _____. A heading is added immediately preceding Section 2002 of the Code
27 of Civil Procedure, to read:

1 CHAPTER 1. MODE OF TAKING THE TESTIMONY OF
2 WITNESSES

3 **Heading of Article 2 (commencing with Section 2009) (repealed).**

4 SEC. _____. The heading of Article 2 (commencing with Section 2009) of Chapter
5 3 of Title 3 of Part 4 of the Code of Civil Procedure is repealed.

6 Article 2. Affidavits

7 **Heading of Chapter 2 (commencing with Section 2009) (added).**

8 SEC. _____. A heading is added immediately preceding Section 2009 of the Code
9 of Civil Procedure, to read:

10 CHAPTER 2. AFFIDAVITS

11 **Code Civ. Proc. §§ 2016-2036 (repealed). Discovery**

12 SEC. _____. Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of
13 Part 4 of the Code of Civil Procedure is repealed.

14 **Comment.** Sections 2016-2036 are repealed to facilitate nonsubstantive reorganization of the
15 rules governing civil discovery.

16 ☞ **Staff Note.** We plan to insert a disposition table and possibly also the text of the repealed
17 sections here. Preparation of this material should be fairly mechanical.

18 **Code Civ. Proc. §§ 2016.010-2036.050 (added). Discovery**

19 SEC. _____. Chapter 3 (commencing with Section 2016.010) is added to Title 4 of
20 Part 4 of the Code of Civil Procedure, to read:

21 CHAPTER 3. DISCOVERY

22 Article 1. General Provisions

23 **§ 2016.010. Short title**

24 2016.010. This chapter may be cited as the Civil Discovery Act of 1986.

25 **Comment.** Section 2016.010 continues former Section 2016(a) without substantive change.

26 **§ 2016.020. Definitions**

27 2016.020. As used in this chapter:

28 (a) “Action” includes a civil action and a special proceeding of a civil nature.

29 (b) “Court” means the trial court in which the action is pending, unless otherwise
30 specified.

31 (c) “Document” and “writing” mean a writing as defined in Section 250 of the
32 Evidence Code.

1 **Comment.** Section 2016.020 continues former Section 2016(b) without substantive change.

2 **§ 2016.030. Written stipulations regarding depositions and discovery**

3 2016.030. Unless the court orders otherwise, the parties may by written
4 stipulation do either or both of the following:

5 (a) Provide that depositions may be taken before any person, at any time or
6 place, on any notice, and in any manner, and when so taken may be used like other
7 depositions.

8 (b) Modify the procedures provided by this chapter for other methods of
9 discovery.

10 **Comment.** Section 2016.030 continues former Section 2021 without substantive change.

11 ☞ **Staff Note.** Commissioner Best asks whether the language in subdivision (a) “is designed to
12 prevent parties from modifying some aspect of depositions or what its function and limitations
13 may be.” Email from R. Best to B. Gaal (Aug. 11, 2002). He wonders whether there is some
14 reason not to just have a rule that allows parties to modify all procedures by stipulation. *Id.* Thus,
15 he suggests deleting subdivision (a) and making subdivision (b) “the rule for all discovery
16 provisions.” *Id.*

17 The staff agrees that subdivision (a) appears unnecessary. We would solicit comment on
18 whether Section 2016.030 could be revised to read: “Unless the court orders otherwise, the parties
19 may by written stipulation modify the procedures provided by this chapter for any method of
20 discovery permitted under Section 2019.010.”

21 **§ 2016.040. Service by mail**

22 2016.040. Section 1013 applies to any method of discovery or service of a
23 motion for discovery provided for in this chapter.

24 **Comment.** Section 2016.040 continues former Section 2019(e) without substantive change.

25 ☞ **Staff Note.** Section 2019(e) refers to service of a motion for discovery, but not to service of a
26 motion for a protective order or a motion to compel. Perhaps proposed Section 2016.040 should
27 be revised to refer to “service of a motion provided for in this chapter.” We would solicit
28 comment on this alternative.

29 **§ 2016.050. Computation of time when last day falls on Saturday, Sunday, or holiday**

30 2016.050. When the last day to perform or complete any act provided for in this
31 chapter falls on a Saturday, Sunday, or holiday as specified in Section 10, the time
32 limit is extended until the next day that is not a Saturday, Sunday, or holiday.

33 **Comment.** Section 2016.050 continues former Section 2024(g) without substantive change.

34 **§ 2016.060. Application of chapter to discovery in aid of enforcement of money judgment**

35 2016.060. This chapter applies to discovery in aid of enforcement of a money
36 judgment only to the extent provided in Article 1 (commencing with Section
37 708.010) of Chapter 6 of Title 9 of Part 2.

38 **Comment.** Section 2016.060 continues former Section 2016(c) without substantive change.

1 Article 2. Scope of Discovery

2 **§ 2017.010. Scope of discovery**

3 2017.010. Unless otherwise limited by order of the court in accordance with this
4 chapter, any party may obtain discovery regarding any matter, not privileged, that
5 is relevant to the subject matter involved in the pending action or to the
6 determination of any motion made in that action, if the matter either is itself
7 admissible in evidence or appears reasonably calculated to lead to the discovery of
8 admissible evidence. Discovery may relate to the claim or defense of the party
9 seeking discovery or of any other party to the action. Discovery may be obtained
10 of the identity and location of persons having knowledge of any discoverable
11 matter, as well as of the existence, description, nature, custody, condition, and
12 location of any document, tangible thing, or land or other property.

13 **Comment.** Section 2017.010 continues former Section 2017(a) without substantive change.

14 **§ 2017.020. Discovery of insurance coverage**

15 2017.020. A party may obtain discovery of the existence and contents of any
16 agreement under which any insurance carrier may be liable to satisfy in whole or
17 in part a judgment that may be entered in the action or to indemnify or reimburse
18 for payments made to satisfy the judgment. This discovery may include the
19 identity of the carrier and the nature and limits of the coverage. A party may also
20 obtain discovery as to whether that insurance carrier is disputing the agreement's
21 coverage of the claim involved in the action, but not as to the nature and substance
22 of that dispute. Information concerning the insurance agreement is not by reason
23 of disclosure admissible in evidence at trial.

24 **Comment.** Section 2017.020 continues former Section 2017(b) without change.

25 **§ 2017.030. Discovery concerning plaintiff's sexual conduct**

26 2017.030. (a) In any civil action alleging conduct that constitutes sexual
27 harassment, sexual assault, or sexual battery, any party seeking discovery
28 concerning the plaintiff's sexual conduct with individuals other than the alleged
29 perpetrator shall establish specific facts showing that there is good cause for that
30 discovery, and that the matter sought to be discovered is relevant to the subject
31 matter of the action and reasonably calculated to lead to the discovery of
32 admissible evidence. This showing shall be made by a noticed motion,
33 accompanied by a declaration under Section 2023.060, and shall not be made or
34 considered by the court at an ex parte hearing.

35 (b) Except as provided in Section 2023.040, the court shall impose a monetary
36 sanction under Article 7 against any party, person, or attorney who unsuccessfully
37 makes or opposes a motion for discovery [under subdivision (a)].

38 **Comment.** Subdivision (a) of Section 2017.030 continues the first paragraph of former Section
39 2017(d) without substantive change.

1 Subdivision (b) continues the second paragraph of former Section 2017(d) without substantive
2 change.

3 ☞ **Staff Note.** The second paragraph of Section 2017(d) states: “The court shall impose a
4 monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully
5 makes or opposes a *motion for discovery*, unless it finds that the one subject to the sanction acted
6 with substantial justification or that other circumstances make the imposition of the sanction
7 unjust.” (Emphasis added.) From this language, it is unclear whether the provision is meant to
8 apply to any discovery motion, or only to a motion seeking discovery concerning the plaintiff’s
9 sexual conduct with individuals other than the alleged perpetrator. The staff presumes the latter,
10 because otherwise language in other discovery provisions would be surplusage. We would solicit
11 comment on whether the reference to “discovery” should be changed to “discovery under
12 subdivision (a),” as shown in brackets in Section 2017.030(b).

13 **§ 2017.040. Court order limiting scope of discovery**

14 2017.040. (a) The court shall limit the scope of discovery if it determines that the
15 burden, expense, or intrusiveness of that discovery clearly outweighs the
16 likelihood that the information sought will lead to the discovery of admissible
17 evidence. The court may make this determination pursuant to a motion for
18 protective order by a party or other affected person. This motion shall be
19 accompanied by a declaration under Section 2023.060.

20 (b) Except as provided in Section 2023.040, the court shall impose a monetary
21 sanction under Article 7 against any party, person, or attorney who unsuccessfully
22 makes or opposes a motion for a protective order.

23 **Comment.** Subdivision (a) of Section 2017.040 continues the first paragraph of former Section
24 2017(c) without substantive change.

25 Subdivision (b) continues the second paragraph of former Section 2017(c) without substantive
26 change.

27 Article. 3. Use of Technology in Conducting
28 Discovery in a Complex Case

29 **§ 2017.510. “Technology” defined**

30 2017.510. Subject to the findings required by Section 2017.530 and the purpose
31 of permitting and encouraging cost-effective and efficient discovery,
32 “technology,” as used in this article, includes, but is not limited to, telephone, e-
33 mail, CD-ROM, Internet web sites, electronic documents, electronic document
34 depositories, Internet depositions and storage, videoconferencing, and other
35 electronic technology that may be used to improve communication and the
36 discovery process.

37 **Comment.** Section 2017.510 continues former Section 2017(e)(6) without substantive change.

38 **§ 2017.520. Effect of article**

39 2017.520. (a) Nothing in this article diminishes the rights and duties of the
40 parties regarding discovery, privileges, procedural rights, or substantive law.

1 (b) Nothing in this article modifies the requirement for use of a stenographic
2 court reporter as provided in Section 2025.170. The rules, standards, and
3 guidelines adopted pursuant to this article shall be consistent with the requirement
4 of Section 2025.170 that deposition testimony be taken stenographically unless the
5 parties agree or the court orders otherwise.

6 (c) Nothing in this article modifies or affects in any way the process used for the
7 selection of a stenographic court reporter.

8 **Comment.** Subdivision (a) of Section 2017.520 continues former Section 2017(e)(4) without
9 substantive change.

10 Subdivision (b) continues former Section 2017(e)(7) without substantive change.

11 Subdivision (c) continues former Section 2017(e)(8) without substantive change.

12 **§ 2017.530. Use of technology in conducting discovery in complex case**

13 2017.530. (a) Pursuant to a noticed motion, a court may enter an order
14 authorizing the use of technology in conducting discovery in any of the following:

15 (1) A case designated as complex under Section 19 of the Judicial
16 Administration Standards.

17 (2) Cases ordered to be coordinated under Chapter 3 (commencing with Section
18 404) of Title 4 of Part 2.

19 (3) An exceptional case exempt from case disposition time goals under Article 5
20 (commencing with Section 68600) of Chapter 2 of Title 8 of the Government
21 Code.

22 (4) A case assigned to Plan 3 under paragraph (3) of subdivision (b) of Section
23 2105 of the California Rules of Court.

24 (b) In a case other than one listed in subdivision (a), the parties may stipulate to
25 the entry of an order authorizing the use of technology in conducting discovery.

26 (c) An order authorizing the use of technology in conducting discovery may be
27 made only upon the express findings of the court or stipulation of the parties that
28 the procedures adopted in the order meet all of the following criteria:

29 (1) They promote cost-effective and efficient discovery or motions relating
30 thereto.

31 (2) They do not impose or require an undue expenditure of time or money.

32 (3) They do not create an undue economic burden or hardship on any person.

33 (4) They promote open competition among vendors and providers of services in
34 order to facilitate the highest quality service at the lowest reasonable cost to the
35 litigants.

36 (5) They do not require the parties or counsel to purchase exceptional or
37 unnecessary services, hardware, or software.

38 (d) Pursuant to an order authorizing the use of technology in conducting
39 discovery, discovery may be conducted and maintained in electronic media and by
40 electronic communication. The court may enter orders prescribing procedures
41 relating to the use of electronic technology in conducting discovery, including
42 orders for service of discovery requests and responses, service and presentation of

1 motions, conduct of discovery in electronic media, and production, storage, and
2 access to information in electronic form.

3 (e) The Judicial Council may promulgate rules, standards, and guidelines
4 relating to electronic discovery and the use of electronic discovery data and
5 documents in court proceedings.

6 **Comment.** Subdivision (a) of Section 2017.530 continues the first sentence of former Section
7 2017(e)(1) without substantive change.

8 Subdivision (b) continues the second sentence of former Section 2017(e)(1) without substantive
9 change.

10 Subdivision (c) continues former Section 2017(e)(2) without substantive change.

11 Subdivision (d) continues the first two sentences of former Section 2017(e)(3) without
12 substantive change.

13 Subdivision (e) continues the third sentence of former Section 2017(e)(3) without substantive
14 change.

15 **§ 2017.540. Use of service provider**

16 2017.540. (a) If a service provider is to be used and compensated by the parties
17 in discovery under this article, the court shall appoint the person or organization
18 agreed on by the parties and approve the contract agreed on by the parties and the
19 service provider. If the parties do not agree on selection of a service provider, each
20 party shall submit to the court up to three nominees for appointment, together with
21 a contract acceptable to the nominee. The court shall appoint a service provider
22 from among the nominees. The court may condition this appointment on the
23 acceptance of modifications in the terms of the contract. If no nominations are
24 received from any of the parties, the court shall appoint one or more service
25 providers.

26 (b) Pursuant to a noticed motion at any time and on a showing of good cause, the
27 court may order the removal of the service provider or vacate any agreement
28 between the parties and the service provider, or both, effective as of the date of the
29 order. The continued service of the service provider shall be subject to review
30 periodically, as agreed by the parties and the service provider, or annually if they
31 do not agree. Any disputes involving the contract or the duties, rights, and
32 obligations of the parties or the service provider may be determined on a noticed
33 motion in the action.

34 **Comment.** Subdivision (a) of Section 2017.540 continues the first four sentences of former
35 Section 2017(e)(5) without substantive change.

36 Subdivision (b) continues the fifth, sixth, and seventh sentences of former Section 2017(e)(5)
37 without substantive change.

38 **Article 4. Attorney Work Product**

39 **§ 2018.010. “Client” defined**

40 2018.010. For purposes of this article, “client” means a client as defined in
41 Section 951 of the Evidence Code.

1 **Comment.** Section 2018.010 continues the second paragraph of former Section 2018(f) without
2 substantive change.

3 **§ 2018.020. Attorney work product**

4 2018.020. (a) It is the policy of the state to do both of the following:

5 (1) Preserve the rights of attorneys to prepare cases for trial with that degree of
6 privacy necessary to encourage them to prepare their cases thoroughly and to
7 investigate not only the favorable but the unfavorable aspects of those cases.

8 (2) Prevent attorneys from taking undue advantage of their adversary's industry
9 and efforts.

10 (b) A writing that reflects an attorney's impressions, conclusions, opinions, or
11 legal research or theories is not discoverable under any circumstances.

12 (c) The work product of an attorney, other than a writing described in
13 subdivision (b), is not discoverable unless the court determines that denial of
14 discovery will unfairly prejudice the party seeking discovery in preparing that
15 party's claim or defense or will result in an injustice.

16 (d) This section is intended to be a restatement of existing law relating to
17 protection of work product. It is not intended to expand or reduce the extent to
18 which work product is discoverable under existing law in any action.

19 (e) The State Bar may discover the work product of an attorney against whom
20 disciplinary charges are pending when it is relevant to issues of breach of duty by
21 the lawyer and requisite client approval has been obtained. Where requested and
22 for good cause, discovery under this subdivision shall be subject to a protective
23 order to ensure the confidentiality of the work product except for its use by the
24 State Bar in disciplinary investigations and its consideration under seal in State
25 Bar Court proceedings. For purposes of this article, whenever a client has initiated
26 a complaint against an attorney, the requisite client approval shall be deemed to
27 have been obtained.

28 (f) In an action between an attorney and a client or a former client of the
29 attorney, no work product privilege under this section exists if the work product is
30 relevant to an issue of breach by the attorney of a duty to the client arising out of
31 the attorney-client relationship.

32 **Comment.** Subdivision (a) of Section 2018.020 continues former Section 2018(a) without
33 substantive change.

34 Subdivision (b) continues former Section 2018(c) without substantive change.

35 Subdivision (c) continues former Section 2018(b) without substantive change.

36 Subdivision (d) continues former Section 2018(d) without change.

37 Subdivision (e) continues former Section 2018(e) without substantive change.

38 Subdivision (f) continues the first paragraph of former Section 2018(f) without substantive
39 change.

1 Article 5. Methods and Sequence of Discovery

2 **§ 2019.010. Methods of discovery**

3 2019.010. Any party may obtain discovery by one or more of the following
4 methods:

- 5 (a) Oral and written depositions.
- 6 (b) Interrogatories to a party.
- 7 (c) Inspections of documents, things, and places.
- 8 (d) Physical and mental examinations.
- 9 (e) Requests for admissions.
- 10 (f) Simultaneous exchanges of expert trial witness information.

11 **Comment.** Section 2019.010 continues former Section 2019(a) without change.

12 **§ 2019.020. Sequence of discovery**

13 2019.020. (a) Except as otherwise provided by a rule of the Judicial Council, a
14 local court rule, or a local uniform written policy, the methods of discovery may
15 be used in any sequence, and the fact that a party is conducting discovery, whether
16 by deposition or another method, shall not operate to delay the discovery of any
17 other party.

18 (b) Notwithstanding subdivision (a), on motion and for good cause shown, the
19 court may establish the sequence and timing of discovery for the convenience of
20 parties and witnesses and in the interests of justice.

21 **Comment.** Subdivision (a) of Section 2019.020 continues the first sentence of former Section
22 2019(c) without substantive change.

23 Subdivision (b) continues the second sentence of former Section 2019(c) without substantive
24 change.

25 **§ 2019.030. Timing of discovery relating to trade secret**

26 2019.030. In any action alleging the misappropriation of a trade secret under the
27 Uniform Trade Secrets Act (Title 5 (commencing with Section 3426) of Part 1 of
28 Division 4 of the Civil Code), before commencing discovery relating to the trade
29 secret, the party alleging the misappropriation shall identify the trade secret with
30 reasonable particularity subject to any orders that may be appropriate under
31 Section 3426.5 of the Civil Code.

32 **Comment.** Section 2019.030 continues former Section 2019(d) without change.

33 **§ 2019.040. Restriction on use of discovery methods**

34 (a) The court shall restrict the frequency or extent of use of a discovery method
35 provided in Section 2019.010 if it determines either of the following:

36 (1) The discovery sought is unreasonably cumulative or duplicative, or is
37 obtainable from some other source that is more convenient, less burdensome, or
38 less expensive.

1 (2) The selected method of discovery is unduly burdensome or expensive, taking
2 into account the needs of the case, the amount in controversy, and the importance
3 of the issues at stake in the litigation.

4 (b) The court may make these determinations pursuant to a motion for a
5 protective order by a party or other affected person. This motion shall be
6 accompanied by a declaration under Section 2023.060.

7 (c) Except as provided in Section 2023.040, the court shall impose a monetary
8 sanction under Article 7 against any party, person, or attorney who unsuccessfully
9 makes or opposes a motion for a protective order.

10 **Comment.** The introductory clause of subdivision (a) of Section 2019.040 continues the
11 introductory clause of former Section 2019(b) without substantive change. Subdivision (a)(1)
12 continues former Section 2019(b)(1) without change. Subdivision (a)(2) continues the first
13 paragraph of former Section 2019(b)(2) without change.

14 Subdivision (b) continues the second paragraph of former Section 2019(b)(2) without
15 substantive change.

16 Subdivision (c) continues the third paragraph of former Section 2019(b)(2) without substantive
17 change.

18 Article 6. Nonparty Discovery

19 § 2020.010. Method and process for obtaining discovery from nonparty

20 2020.010. (a) Any of the following methods may be used to obtain discovery
21 within the state from a person who is not a party to an action:

22 (1) An oral deposition under Article 9.

23 (2) A written deposition under Article 11.

24 (3) A deposition for production of business records and things under Section
25 2020.060 or 2020.100.

26 (b) Except as provided in subdivision (a) of Section 2025.100, the process by
27 which a nonparty is required to provide discovery is a deposition subpoena.

28 **Comment.** Subdivision (a) of Section 2020.010 continues the first sentence of former Section
29 2020(a) without substantive change.

30 Subdivision (b) continues the second sentence of former Section 2020(a) without change,
31 except to conform the cross-reference.

32 § 2020.020. Types of deposition subpoenas

33 2020.020. A deposition subpoena may command any of the following:

34 (a) Only the attendance and the testimony of the deponent, under Section
35 2020.050.

36 (b) Only the production of business records for copying, under Section
37 2020.060.

38 (c) The attendance and the testimony of the deponent, as well as the production
39 of business records, other documents, and tangible things, under Section 2020.100.

40 **Comment.** Section 2020.020 continues the third sentence of former Section 2020(a) without
41 substantive change.

1 **§ 2020.030. Application of other code provisions**

2 2020.030. Except as modified in this article, the provisions of Title 3
3 (commencing with Section 1985), and of Article 4 (commencing with Section
4 1560) of Chapter 2 of Division 11 of the Evidence Code, apply to a deposition
5 subpoena.

6 **Comment.** Section 2020.030 continues the last paragraph of former Section 2020(a) without
7 substantive change.

8 **§ 2020.040. Issuance of deposition subpoena**

9 2020.040. (a) The clerk of the court in which the action is pending shall issue a
10 deposition subpoena signed and sealed, but otherwise in blank, to a party
11 requesting it, who shall fill it in before service.

12 (b) Instead of a court-issued deposition subpoena, an attorney of record for any
13 party may sign and issue a deposition subpoena. A deposition subpoena issued
14 under this subdivision need not be sealed. A copy may be served on the nonparty,
15 and the attorney may retain the original.

16 **Comment.** Subdivision (a) of Section 2020.040 continues the first sentence of former Section
17 2020(b) without substantive change.

18 Subdivision (b) continues the second sentence of former Section 2020(b) without substantive
19 change.

20 **§ 2020.050. Deposition subpoena commanding only attendance and testimony of deponent**

21 2020.050. The following rules apply to a deposition subpoena that commands
22 only the attendance and the testimony of the deponent:

23 (a) The subpoena shall specify the time when and the place where the deponent
24 is commanded to attend the deposition.

25 (b) The subpoena shall set forth a summary of all of the following:

26 (1) The nature of a deposition.

27 (2) The rights and duties of the deponent.

28 (3) The penalties for disobedience of a deposition subpoena, as described in
29 Section 2020.120.

30 (c) If the deposition will be recorded by videotape under Section 2025.180, the
31 subpoena shall state that it will be recorded in that manner.

32 (d) If the deponent is an organization, the subpoena shall describe with
33 reasonable particularity the matters on which examination is requested. The
34 subpoena shall also advise the organization of its duty to make the designation of
35 employees or agents who will attend the deposition, as described in Section
36 2025.040.

37 **Comment.** Section 2020.050 continues former Section 2020(c) without substantive change.

38 **§ 2020.060. Deposition subpoena commanding only production of business records for**
39 **copying**

40 2020.060. (a) A deposition subpoena that commands only the production of
41 business records for copying shall designate the business records to be produced

1 either by specifically describing each individual item or by reasonably
2 particularizing each category of item.

3 (b) Notwithstanding subdivision (a), specific information identifiable only to the
4 deponent's records system, like a policy number or the date when a consumer
5 interacted with the witness, is not required.

6 (c) A deposition subpoena that commands only the production of business
7 records for copying need not be accompanied by an affidavit or declaration
8 showing good cause for the production of the business records designated in it. It
9 shall be directed to the custodian of those records or another person qualified to
10 certify the records. It shall command compliance in accordance with Section
11 2020.080 on a date that is no earlier than 20 days after the issuance, or 15 days
12 after the service, of the deposition subpoena, whichever date is later.

13 (d) If, under Section 1985.3 or 1985.6, the one to whom the deposition subpoena
14 is directed is a witness, and the business records described in the deposition
15 subpoena are personal records pertaining to a consumer, the service of the
16 deposition subpoena shall be accompanied either by a copy of the proof of service
17 of the notice to the consumer described in subdivision (e) of Section 1985.3, or
18 subdivision (b) of Section 1985.6, as applicable, or by the consumer's written
19 authorization to release personal records described in paragraph (2) of subdivision
20 (c) of Section 1985.3, or paragraph (2) of subdivision (c) of Section 1985.6, as
21 applicable.

22 **Comment.** Subdivision (a) of Section 2020.060 continues the first clause of the first sentence
23 of former Section 2020(d)(1) without substantive change.

24 Subdivision (b) continues the second clause of the first sentence of former Section 2020(d)(1)
25 without substantive change.

26 Subdivision (c) continues the second, third, and fourth sentences of former Section 2020(d)(1)
27 without substantive change.

28 Subdivision (d) continues former Section 2020(d)(2) without change.

29 **§ 2020.070. Officer for deposition seeking only production of business records for copying**

30 2020.070. The officer for a deposition seeking discovery only of business
31 records for copying under Section 2020.060 shall be a professional photocopier
32 registered under Chapter 20 (commencing with Section 22450) of Division 8 of
33 the Business and Professions Code, or a person exempted from the registration
34 requirements of that chapter under Section 22451 of the Business and Professions
35 Code. This deposition officer shall not be financially interested in the action, or a
36 relative or employee of any attorney of the parties. Any objection to the
37 qualifications of the deposition officer is waived unless made before the date of
38 production or as soon thereafter as the ground for that objection becomes known
39 or could be discovered by reasonable diligence.

40 **Comment.** Section 2020.070 continues former Section 2020(d)(3) without change, except to
41 conform a cross-reference.

1 § 2020.080. Compliance with deposition subpoena commanding only production of business
2 records for copying

3 2020.080. (a) Except as provided in subdivision (e), if a deposition subpoena
4 commands only the production of business records for copying, the custodian of
5 the records or other qualified person shall, in person, by messenger, or by mail,
6 deliver both of the following to the deposition officer specified in the subpoena:

7 (1) A true, legible, and durable copy of the records.

8 (2) An affidavit in compliance with Section 1561 of the Evidence Code.

9 (b) If the delivery required by subdivision (a) is made to the office of the
10 deposition officer, the records shall be enclosed, sealed, and directed as described
11 in subdivision (c) of Section 1560 of the Evidence Code.

12 (c) If the delivery required by subdivision (a) is made at the office of the
13 business whose records are the subject of the deposition subpoena, the custodian
14 of those records or other qualified person shall do one of the following:

15 (1) Permit the deposition officer specified in the deposition subpoena to make a
16 copy of the originals of the designated business records during normal business
17 hours as defined in subdivision (e) of Section 1560 of the Evidence Code.

18 (2) Deliver to the deposition officer a true, legible, and durable copy of the
19 records on receipt of payment in cash or by check, by or on behalf of the party
20 serving the deposition subpoena, of the reasonable costs of preparing that copy,
21 together with an itemized statement of the cost of preparation, as determined under
22 subdivision (b) of Section 1563 of the Evidence Code. This copy need not be
23 delivered in a sealed envelope.

24 (d) Unless the parties, and if the records are those of a consumer as defined in
25 Section 1985.3 or 1985.6, the consumer, stipulate to an earlier date, the custodian
26 of the records shall not deliver to the deposition officer the records that are the
27 subject of the deposition subpoena before the date and time specified in the
28 deposition subpoena. The following legend shall appear in boldface type on the
29 deposition subpoena immediately following the date and time specified for
30 production: “Do not release the requested records to the deposition officer before
31 the date and time stated above.”

32 (e) This section does not apply if the subpoena directs the deponent to make the
33 records available for inspection or copying by the subpoenaing party’s attorney or
34 a representative of that attorney at the witness’ business address under subdivision
35 (e) of Section 1560 of the Evidence Code.

36 (f) The provisions of Section 1562 of the Evidence Code concerning the
37 admissibility of the affidavit of the custodian or other qualified person apply to a
38 deposition subpoena served under Section 2020.060.

39 **Comment.** Subdivision (a) of Section 2020.080 continues the second clause of the first
40 sentence of former Section 2020(d)(4) without substantive change.

41 Subdivision (b) continues the second sentence of former Section 2020(d)(4) without substantive
42 change.

43 Subdivision (c) continues the third and fourth sentences of former Section 2020(d)(4) without
44 substantive change.

1 Subdivision (d) continues the fifth and sixth sentences of former Section 2020(d)(4) without
2 substantive change.

3 Subdivision (e) continues the first clause of the first sentence of former Section 2020(d)(4)
4 without substantive change.

5 Subdivision (f) continues former Section 2020(d)(6) without change, except to conform the
6 cross-reference.

7 **§ 2020.090. Duties of deposition officer**

8 2020.090. Promptly on or after the deposition date and after the receipt or the
9 making of a copy of business records under Section 2020.080, the deposition
10 officer shall provide that copy to the party at whose instance the deposition
11 subpoena was served, and a copy of those records to any other party to the action
12 who then or subsequently, within a period of six months following the settlement
13 of the case, notifies the deposition officer that the party desires to purchase a copy
14 of those records.

15 **Comment.** Section 2020.090 continues former Section 2020(d)(5) without change, except to
16 conform the cross-reference.

17 **§ 2020.100. Deposition subpoena commanding both production of business records and**
18 **attendance and testimony of deponent**

19 2020.100. (a) A deposition subpoena that commands the attendance and the
20 testimony of the deponent, as well as the production of business records,
21 documents, and tangible things, shall:

22 (1) Comply with the requirements of Section 2020.050.

23 (2) Designate the business records, documents, and tangible things to be
24 produced either by specifically describing each individual item or by reasonably
25 particularizing each category of item.

26 (3) Specify any testing or sampling that is being sought.

27 (b) A deposition subpoena under subdivision (a) need not be accompanied by an
28 affidavit or declaration showing good cause for the production of the documents
29 and things designated.

30 (c) Where, as described in Section 1985.3, the person to whom the deposition
31 subpoena is directed is a witness, and the business records described in the
32 deposition subpoena are personal records pertaining to a consumer, the service of
33 the deposition subpoena shall be accompanied either by a copy of the proof of
34 service of the notice to the consumer described in subdivision (e) of Section
35 1985.3, or by the consumer's written authorization to release personal records
36 described in paragraph (2) of subdivision (c) of Section 1985.3.

37 **Comment.** Subdivision (a) of Section 2020.100 continues the first sentence of former Section
38 2020(e) without substantive change.

39 Subdivision (b) continues the second sentence of former Section 2020(e) without substantive
40 change.

41 Subdivision (c) continues the second paragraph of former Section 2020(e) without change.

1 **§ 2020.110. Service of deposition subpoena**

2 2020.110. (a) Subject to subdivision (c) of Section 2020.060, service of a
3 deposition subpoena shall be effected a sufficient time in advance of the deposition
4 to provide the deponent a reasonable opportunity to locate and produce any
5 designated business records, documents, and tangible things, as described in
6 Sections 2020.060, 2020.070, 2020.080, and 2020.090, and, where personal
7 attendance is commanded, a reasonable time to travel to the place of deposition.

8 (b) Any person may serve the subpoena by personal delivery of a copy of it as
9 follows:

10 (1) If the deponent is a natural person, to that person.

11 (2) If the deponent is an organization, to any officer, director, custodian of
12 records, or to any agent or employee authorized by the organization to accept
13 service of a subpoena.

14 (c) Personal service of any deposition subpoena is effective to require all of the
15 following of any deponent who is a resident of California at the time of service:

16 (1) Personal attendance and testimony, if the subpoena so specifies.

17 (2) Any specified production, inspection, testing, and sampling.

18 (3) The deponent's attendance at a court session to consider any issue arising out
19 of the deponent's refusal to be sworn, or to answer any question, or to produce
20 specified items, or to permit inspection or photocopying, if the subpoena so
21 specifies, or specified testing and sampling of the items produced.

22 **Comment.** Subdivision (a) of Section 2020.110 continues the first sentence of the first
23 paragraph of former Section 2020(f) without change, except to conform the cross-references.

24 Subdivision (b) continues the second sentence of the first paragraph of former Section 2020(f)
25 without substantive change.

26 Subdivision (c) continues former Section 2020(g) without substantive change.

27 **§ 2020.120. Witness fees**

28 2020.120. (a) If a deposition subpoena requires the personal attendance of the
29 deponent, under Section 2020.050 or 2020.100, the party noticing the deposition
30 shall pay to the deponent in cash or by check the same witness fee and mileage
31 required by Chapter 1 (commencing with Section 68070) of Title 8 of the
32 Government Code for attendance and testimony before the court in which the
33 action is pending. This payment, whether or not demanded by the deponent, shall
34 be made, at the option of the party noticing the deposition, either at the time of
35 service of the deposition subpoena, or at the time the deponent attends for the
36 taking of testimony.

37 (b) Service of a deposition subpoena that does not require the personal
38 attendance of a custodian of records or other qualified person, under Section
39 2020.060, shall be accompanied, whether or not demanded by the deponent, by a
40 payment in cash or by check of the witness fee required by paragraph (6) of
41 subdivision (b) of Section 1563 of the Evidence Code.

42 **Comment.** Subdivision (a) of Section 2020.110 continues the second paragraph of former
43 Section 2020(f) without change, except to conform a cross-reference.

1 Subdivision (b) continues the third paragraph of former Section 2020(f) without change, except
2 to conform a cross-reference.

3 **§ 2020.120. Sanctions for disobedience of deposition subpoena**

4 2020.120. A deponent who disobeys a deposition subpoena in any manner
5 described in subdivision (c) of Section 2020.110 may be punished for contempt
6 under Article 7 without the necessity of a prior order of court directing compliance
7 by the witness. The deponent is also subject to the forfeiture and the payment of
8 damages set forth in Section 1992.

9 **Comment.** Section 2020.120 continues former Section 2020(h) without substantive change.

10 **Article 7. Sanctions**

11 **§ 2023.010. Misuses of discovery process**

12 2023.010. Misuses of the discovery process include, but are not limited to, the
13 following:

14 (a) Persisting, over objection and without substantial justification, in an attempt
15 to obtain information or materials that are outside the scope of permissible
16 discovery.

17 (b) Using a discovery method in a manner that does not comply with its
18 specified procedures.

19 (c) Employing a discovery method in a manner or to an extent that causes
20 unwarranted annoyance, embarrassment, or oppression, or undue burden and
21 expense.

22 (d) Failing to respond or to submit to an authorized method of discovery.

23 (e) Making, without substantial justification, an unmeritorious objection to
24 discovery.

25 (f) Making an evasive response to discovery.

26 (g) Disobeying a court order to provide discovery.

27 (h) Making or opposing, unsuccessfully and without substantial justification, a
28 motion to compel or to limit discovery.

29 (i) Failing to confer in person, by telephone, or by letter with an opposing party
30 or attorney in a reasonable and good faith attempt to resolve informally any
31 dispute concerning discovery, if the section governing a particular discovery
32 motion requires the filing of a declaration stating facts showing that an attempt at
33 informal resolution has been made.

34 **Comment.** Section 2023.010 continues former Section 2023(a)(1)-(a)(8) and the first sentence
35 of former Section 2023(a)(9) without substantive change.

36 **§ 2023.020. Sanctions for failure to confer as required**

37 2023.020. Notwithstanding the outcome of the particular discovery motion, the
38 court shall impose a monetary sanction ordering that any party or attorney who

1 fails to confer as required pay the reasonable expenses, including attorney’s fees,
2 incurred by anyone as a result of that conduct.

3 **Comment.** Section 2023.020 continues the second sentence of former Section 2023(a)(9)
4 without change.

5 **§ 2023.030. Other sanctions for misuse of discovery**

6 2023.030. To the extent authorized by the section governing any particular
7 discovery method or any other provision of this chapter, the court, after notice to
8 any affected party, person, or attorney, and after opportunity for hearing, may
9 impose the following sanctions against anyone engaging in conduct that is a
10 misuse of the discovery process:

11 (a) The court may impose a monetary sanction ordering that one engaging in the
12 misuse of the discovery process, or any attorney advising that conduct, or both pay
13 the reasonable expenses, including attorney’s fees, incurred by anyone as a result
14 of that conduct. The court may also impose this sanction on one unsuccessfully
15 asserting that another has engaged in the misuse of the discovery process, or on
16 any attorney who advised that assertion, or on both. Except as provided in Section
17 2023.040, if a monetary sanction is authorized by any provision of this chapter, the
18 court shall impose that sanction.

19 (b) The court may impose an issue sanction ordering that designated facts shall
20 be taken as established in the action in accordance with the claim of the party
21 adversely affected by the misuse of the discovery process. The court may also
22 impose an issue sanction by an order prohibiting any party engaging in the misuse
23 of the discovery process from supporting or opposing designated claims or
24 defenses.

25 (c) The court may impose an evidence sanction by an order prohibiting any party
26 engaging in the misuse of the discovery process from introducing designated
27 matters in evidence.

28 (d) The court may impose a terminating sanction by one of the following orders:
29 (1) An order striking out the pleadings or parts of the pleadings of any party
30 engaging in the misuse of the discovery process.

31 (2) An order staying further proceedings by that party until an order for
32 discovery is obeyed.

33 (3) An order dismissing the action, or any part of the action, of that party.

34 (4) An order rendering a judgment by default against that party.

35 (e) The court may impose a contempt sanction by an order treating the misuse of
36 the discovery process as a contempt of court.

37 **Comment.** The introductory clause of Section 2023.030 continues the introductory clause of
38 former Section 2023(b) without substantive change.

39 Subdivision (a) continues former Section 2023(b)(1) without substantive change.

40 Subdivision (b) continues former Section 2023(b)(2) without change.

41 Subdivision (c) continues former Section 2023(b)(3) without change.

42 Subdivision (d) continues former Section 2023(b)(4) without change.

43 Subdivision (e) continues former Section 2023(b)(5) without change.

1 § 2024.020. Discovery cutoff

2 2024.020. (a) Except as otherwise provided in this article, any party shall be
3 entitled as a matter of right to complete discovery proceedings on or before the
4 30th day, and to have motions concerning discovery heard on or before the 15th
5 day, before the date initially set for the trial of the action.

6 (b) Except as provided in Section 2024.050, a continuance or postponement of
7 the trial date does not operate to reopen discovery proceedings.

8 **Comment.** Subdivision (a) of Section 2024.020 continues the first sentence of former Section
9 2024(a) without substantive change. For computation of the discovery cutoff when the last day
10 falls on a Saturday, Sunday, or holiday, see Section 2016.050.

11 Subdivision (b) continues the fourth sentence of former Section 2024(a) without change, except
12 to conform the cross-reference

13 ☞ **Staff Note.** Section 2024(a) provides:

14 2024.(a) Except as otherwise provided in this section, any party shall be entitled as a matter
15 of right to complete discovery proceedings on or before the 30th day, and to have motions
16 concerning discovery heard on or before the 15th day, before the date initially set for the trial
17 of the action. *If either of these dates falls on a Saturday, Sunday, or holiday as specified in*
18 *Section 10, the last day shall be the next successive court day. ...*

19 (Emphasis added.) The italicized sentence is redundant with Section 2024(g), which is a more
20 general provision. In this draft, Section 2024(g) would be continued without substantive change
21 in Section 2016.050. The second sentence of Section 2024(a) would not be continued, because it
22 is unnecessary.

23 § 2024.030. Discovery cutoff for expert witness

24 2024.030. Any party shall be entitled as a matter of right to complete discovery
25 proceedings pertaining to a witness identified under Article 18 on or before the
26 15th day, and to have motions concerning that discovery heard on or before the
27 10th day, before the date initially set for the trial of the action.

28 **Comment.** Section 2024.030 continues former Section 2024(d) without change, except to
29 conform the cross-reference.

30 § 2024.040. Exceptions to discovery cutoff

31 2024.040. (a) The time limit on completing discovery in an action to be
32 arbitrated under Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part
33 3 is subject to Judicial Council Rule. After an award in a case ordered to judicial
34 arbitration, completion of discovery is limited by Section 1141.24.

35 (b) Sections 2024.020 and 2024.030 do not apply to either of the following:

36 (1) Summary proceedings for obtaining possession of real property governed by
37 Chapter 4 (commencing with Section 1159) of Title 3 of Part 3. Except as
38 provided in Sections 2024.050 and 2025.060, discovery in these proceedings shall
39 be completed on or before the fifth day before the date set for trial.

40 (2) Eminent domain proceedings governed by Title 7 (commencing with Section
41 1230.010) of Part 3.

42 **Comment.** Subdivision (a) of Section 2024.040 continues former Section 2024(b) without
43 change.

1 Subdivision (b) continues former Section 2024(c) without substantive change.

2 **§ 2024.050. Motion to extend or reopen discovery**

3 2024.050. (a) On motion of any party, the court may grant leave to complete
4 discovery proceedings, or to have a motion concerning discovery heard, closer to
5 the initial trial date, or to reopen discovery after a new trial date has been set. This
6 motion shall be accompanied by a declaration under Section 2023.060.

7 (b) In exercising its discretion to grant or deny this motion, the court shall take
8 into consideration any matter relevant to the leave requested, including, but not
9 limited to, the following:

10 (1) The necessity and the reasons for the discovery.

11 (2) The diligence or lack of diligence of the party seeking the discovery or the
12 hearing of a discovery motion, and the reasons that the discovery was not
13 completed or that the discovery motion was not heard earlier.

14 (3) Any likelihood that permitting the discovery or hearing the discovery motion
15 will prevent the case from going to trial on the date set, or otherwise interfere with
16 the trial calendar, or result in prejudice to any other party.

17 (4) The length of time that has elapsed between any date previously set, and the
18 date presently set, for the trial of the action.

19 (c) Except as provided in Section 2023.040, the court shall impose a monetary
20 sanction under Article 7 against any party, person, or attorney who unsuccessfully
21 makes or opposes a motion to extend or to reopen discovery.

22 **Comment.** Subdivision (a) of Section 2024.050 continues the first paragraph of former Section
23 2024(e) without substantive change.

24 Subdivision (b) continues former the second paragraph of former Section 2024(e) without
25 change.

26 Subdivision (c) continues the third paragraph of former Section 2024(e) without substantive
27 change.

28 **§ 2024.060. Agreement extending discovery cutoff**

29 2024.060. Parties to an action may, with the consent of any party affected by it,
30 enter into an agreement to extend the time for the completion of discovery
31 proceedings or for the hearing of motions concerning discovery, or to reopen
32 discovery after a new date for trial of the action has been set. This agreement may
33 be informal, but it shall be confirmed in a writing that specifies the extended date.
34 In no event shall this agreement require a court to grant a continuance or
35 postponement of the trial of the action.

36 **Comment.** Section 2024.060 continues former Section 2024(f) without change.

37 **Article 9. Oral Deposition Inside California**

38 **§ 2025.010. Oral deposition inside California**

39 2025.010. Any party may obtain discovery within the scope delimited by Article
40 2, and subject to the restrictions set forth in Article 5, by taking in California the

1 oral deposition of any person, including any party to the action. The person
2 deposed may be a natural person, an organization such as a public or private
3 corporation, a partnership, an association, or a governmental agency.

4 **Comment.** Section 2025.010 continues former Section 2025(a) without change, except to
5 conform the cross-references.

6 **§ 2025.020. Time of service of deposition notice**

7 2025.020. Subject to Sections 2025.080 and 2025.290, an oral deposition may be
8 taken as follows:

9 (a) The defendant may serve a deposition notice without leave of court at any
10 time after that defendant has been served or has appeared in the action, whichever
11 occurs first.

12 (b) The plaintiff may serve a deposition notice without leave of court on any date
13 that is 20 days after the service of the summons on, or appearance by, any
14 defendant. On motion with or without notice, the court, for good cause shown,
15 may grant to a plaintiff leave to serve a deposition notice on an earlier date.

16 **Comment.** Section 2025.020 continues former Section 2025(b) without substantive change.

17 **§ 2025.030. Content of deposition notice**

18 2025.030. (a) A party desiring to take the oral deposition of any person shall
19 give notice in writing. The deposition notice shall state all of the following:

20 (1) The address where the deposition will be taken.

21 (2) The date of the deposition, selected under Section 2025.080, and the time it
22 will commence.

23 (3) The name of each deponent, and the address and telephone number, if
24 known, of any deponent who is not a party to the action. If the name of the
25 deponent is not known, the deposition notice shall set forth instead a general
26 description sufficient to identify the person or particular class to which the person
27 belongs.

28 (4) The specification with reasonable particularity of any materials or category
29 of materials to be produced by the deponent.

30 (5) Any intention to record the testimony by audiotape or videotape, in addition
31 to recording the testimony by the stenographic method as required by Section
32 2025.170 and any intention to record the testimony by stenographic method,
33 through the instant visual display of the testimony. In the latter event, a copy of the
34 deposition notice shall also be given to the deposition officer. Any offer to provide
35 the instant visual display of the testimony or to provide rough draft transcripts to
36 any party which is accepted before, or offered at, the deposition shall also be made
37 by the deposition officer at the deposition to all parties in attendance.

38 (6) Any intention to reserve the right to use at trial a videotape deposition of a
39 treating or consulting physician or of any expert witness under subdivision (d) of
40 Section 2025.300. In this event, the operator of the videotape camera shall be a
41 person who is authorized to administer an oath, and shall not be financially

1 interested in the action or be a relative or employee of any attorney of any of the
2 parties.

3 (b) Notwithstanding subdivision (a), where under Section 2020.060 only the
4 production by a nonparty of business records for copying is desired, a copy of the
5 deposition subpoena shall serve as the notice of deposition.

6 **Comment.** The first paragraph of subdivision (a) of Section 2025.030 continues the first
7 sentence of former Section 2025(c) and the introductory clause of former Section 2025(d) without
8 substantive change. Subdivision (a)(1) continues former Section 2025(d)(1) without change.
9 Subdivision (a)(2) continues former Section 2025(d)(2) without change, except to conform the
10 cross-reference. Subdivision (a)(3) continues former section 2025(d)(3) without change.
11 Subdivision (a)(4) continues former Section 2025(d)(4) without change. Subdivision (a)(5)
12 continues former Section 2025(d)(5) without substantive change. Subdivision (a)(6) continues the
13 first paragraph of former Section 2025(d)(6) without change, except to conform the cross-
14 reference.

15 Subdivision (b) continues the second sentence of former Section 2025(c) without substantive
16 change.

17 **§ 2025.040. Notice to deponent other than natural person**

18 2025.040. If the deponent named is not a natural person, the deposition notice
19 shall describe with reasonable particularity the matters on which examination is
20 requested. In that event, the deponent shall designate and produce at the deposition
21 those of its officers, directors, managing agents, employees, or agents who are
22 most qualified to testify on its behalf as to those matters to the extent of any
23 information known or reasonably available to the deponent.

24 **Comment.** Section 2025.040 continues the first sentence of the second paragraph of former
25 Section 2025(d)(6) without change.

26 ☞ **Staff Note.** The second sentence of Section 2025(d)(6) states: “A deposition subpoena shall
27 advise a nonparty deponent of its duty to make this designation, and shall describe with
28 reasonable particularity the matters on which examination is requested.” This sentence is
29 redundant with the provisions governing deposition subpoenas. See proposed Sections
30 2020.050(d) and 2020.100(a)(1), which derive from Section 2020(c) and the first sentence of
31 Section 2020(e), respectively. Consequently, the second sentence of Section 2025(d)(6) is not
32 continued in this draft.

33 **§ 2025.050. Service of deposition notice and related documents**

34 2025.050. (a) The party who prepares a notice of deposition shall give the notice
35 to every other party who has appeared in the action. The deposition notice, or the
36 accompanying proof of service, shall list all the parties or attorneys for parties on
37 whom it is served.

38 (b) Where, as defined in subdivision (a) of Section 1985.3, the party giving
39 notice of the deposition is a subpoenaing party, and the deponent is a witness
40 commanded by a deposition subpoena to produce personal records of a consumer,
41 the subpoenaing party shall serve on that consumer all of the following:

42 (1) A notice of the deposition.

43 (2) The notice of privacy rights specified in subdivision (e) of Section 1985.3
44 and in Section 1985.6.

1 (3) A copy of the deposition subpoena.

2 (c) If the attendance of the deponent is to be compelled by service of a
3 deposition subpoena under Article 6, an identical copy of that subpoena shall be
4 served with the deposition notice.

5 **Comment.** Subdivision (a) of Section 2025.050 continues the third and fourth sentences of
6 former Section 2025(c) without substantive change.

7 Subdivision (b) continues the second paragraph of former Section 2025(c) without substantive
8 change.

9 Subdivision (c) continues the third paragraph of former Section 2025(d)(6) without change,
10 except to conform the cross-reference.

11 **§ 2025.060. Place of deposition**

12 2025.060. (a) Unless the court orders otherwise under Section 2025.070, the
13 deposition of a natural person, whether or not a party to the action, shall be taken
14 at a place that is, at the option of the party giving notice of the deposition, either
15 within 75 miles of the deponent's residence, or within the county where the action
16 is pending and within 150 miles of the deponent's residence.

17 (b) The deposition of an organization that is a party to the action shall be taken at
18 a place that is, at the option of the party giving notice of the deposition, either
19 within 75 miles of the organization's principal executive or business office in
20 California, or within the county where the action is pending and within 150 miles
21 of that office.

22 (c) Unless the organization consents to a more distant place, the deposition of
23 any other organization shall be taken within 75 miles of the organization's
24 principal executive or business office in California. If the organization has not
25 designated a principal executive or business office in California, the deposition
26 shall be taken at a place that is, at the option of the party giving notice of the
27 deposition, either within the county where the action is pending, or within 75 miles
28 of any executive or business office in California of the organization.

29 **Comment.** Subdivision (a) of Section 2025.060 continues former Section 2025(e)(1) without
30 substantive change.

31 Subdivision (b) continues the first sentence of former Section 2025(e)(2) without change.

32 Subdivision (c) continues the second and third sentences of former Section 2025(e)(2) without
33 substantive change.

34 **§ 2025.070. Motion to require party to attend deposition at more distant place**

35 2025.070. (a) A party desiring to take the deposition of a natural person who is a
36 party to the action or an officer, director, managing agent, or employee of a party
37 may make a motion for an order that the deponent attend for deposition at a place
38 that is more distant than that permitted under Section 2025.060. This motion shall
39 be accompanied by a declaration under Section 2023.060.

40 (b) In exercising its discretion to grant or deny this motion, the court shall take
41 into consideration any factor tending to show whether the interests of justice will
42 be served by requiring the deponent's attendance at that more distant place,
43 including, but not limited to, the following:

- 1 (1) Whether the moving party selected the forum.
- 2 (2) Whether the deponent will be present to testify at the trial of the action.
- 3 (3) The convenience of the deponent.
- 4 (4) The feasibility of conducting the deposition by written questions under
- 5 Article 11, or of using a discovery method other than a deposition.
- 6 (5) The number of depositions sought to be taken at a place more distant than
- 7 that permitted under Section 2025.060.
- 8 (6) The expense to the parties of requiring the deposition to be taken within the
- 9 distance permitted under Section 2025.060.
- 10 (7) The whereabouts of the deponent at the time for which the deposition is
- 11 scheduled.
- 12 (c) The order may be conditioned on the advancement by the moving party of
- 13 the reasonable expenses and costs to the deponent for travel to the place of
- 14 deposition.
- 15 (d) Except as provided in Section 2023.040, the court shall impose a monetary
- 16 sanction under Article 7 against any party, person, or attorney who unsuccessfully
- 17 makes or opposes a motion to increase the travel limits for a party deponent.

18 **Comment.** Subdivision (a) of Section 2025.070 continues the first paragraph of former Section
19 2025(e)(3) without substantive change.

20 The introductory clause of subdivision (b) continues the second paragraph of former Section
21 2025(e)(3) without change. Subdivision (b)(1) continues former Section 2025(e)(3)(A) without
22 change. Subdivision (b)(2) continues former Section 2025(e)(3)(B) without change. Subdivision
23 (b)(3) continues former Section 2025(e)(3)(C) without change. Subdivision (b)(4) continues
24 former Section 2025(e)(3)(D) without change, except to conform the cross-reference. Subdivision
25 (b)(5) continues former Section 2025(e)(3)(E) without change, except to conform the cross-
26 reference. Subdivision (b)(6) continues former Section 2025(e)(3)(F) without change, except to
27 conform the cross-reference. Subdivision (b)(7) continues former Section 2025(e)(3)(G) without
28 change.

29 Subdivision (c) continues the tenth paragraph of former Section 2025(e)(3) without change.

30 Subdivision (d) continues the eleventh paragraph of former Section 2025(e)(3) without
31 substantive change.

32 **§ 2025.080. Time of taking oral deposition**

33 2025.080. (a) An oral deposition shall be scheduled for a date at least 10 days
34 after service of the deposition notice. If, as defined in subdivision (a) of Section
35 1985.3, the party giving notice of the deposition is a subpoenaing party, and the
36 deponent is a witness commanded by a deposition subpoena to produce personal
37 records of a consumer, the deposition shall be scheduled for a date at least 20 days
38 after issuance of that subpoena.

39 (b) Notwithstanding subdivision (a), in unlawful detainer actions, an oral
40 deposition shall be scheduled for a date at least five days after service of the
41 deposition notice, but not later than five days before trial.

42 (c) On motion or ex parte application of any party or deponent, for good cause
43 shown, the court may shorten or extend the time for scheduling a deposition, or

1 may stay its taking until the determination of a motion for a protective order under
2 Section 2025.120.

3 **Comment.** Subdivision (a) of Section 2025.080 continues the first and second sentences of
4 former Section 2025(f) without change.

5 Subdivision (b) continues the third sentence of former Section 2025(f) without substantive
6 change.

7 Subdivision (c) continues the second paragraph of former Section 2025(f) without change,
8 except to conform the cross-reference.

9 **§ 2025.090. Noncompliance with requirements for deposition notice**

10 2025.090. (a) Any party served with a deposition notice that does not comply
11 with Sections 2025.020 to 2025.080, inclusive, waives any error or irregularity
12 unless that party promptly serves a written objection specifying that error or
13 irregularity at least three calendar days before the date for which the deposition is
14 scheduled, on the party seeking to take the deposition and any other attorney or
15 party on whom the deposition notice was served.

16 (b) If an objection is made three calendar days before the deposition date, the
17 objecting party shall make personal service of that objection pursuant to Section
18 1011 on the party who gave notice of the deposition. Any deposition taken after
19 the service of a written objection shall not be used against the objecting party
20 under Section 2025.300 if the party did not attend the deposition and if the court
21 determines that the objection was a valid one.

22 (c) In addition to serving this written objection, a party may also move for an
23 order staying the taking of the deposition and quashing the deposition notice. This
24 motion shall be accompanied by a declaration under Section 2023.060. The taking
25 of the deposition is stayed pending the determination of this motion.

26 (d) Except as provided in Section 2023.040, the court shall impose a monetary
27 sanction under Article 7 against any party, person, or attorney who unsuccessfully
28 makes or opposes a motion to quash a deposition notice.

29 **Comment.** Subdivision (a) of Section 2025.090 continues the first sentence of former Section
30 2025(g) without change, except to conform a cross-reference.

31 Subdivision (b) continues the second and third sentences of former Section 2025(g) without
32 substantive change.

33 Subdivision (c) continues the second paragraph of former Section 2025(g) without substantive
34 change.

35 Subdivision (d) continues the third paragraph of former Section 2025(g) without substantive
36 change.

37 **§ 2025.100. Effect of deposition notice**

38 2025.100. (a) The service of a deposition notice under Section 2025.050 is
39 effective to require any deponent who is a party to the action or an officer,
40 director, managing agent, or employee of a party to attend and to testify, as well as
41 to produce any document or tangible thing for inspection and copying.

42 (b) The attendance and testimony of any other deponent, as well as the
43 production by the deponent of any document or tangible thing for inspection and

1 copying, requires the service on the deponent of a deposition subpoena under
2 Article 6.

3 **Comment.** Subdivision (a) of Section 2025.100 continues former Section 2025(h)(1) without
4 change, except to conform the cross-reference.

5 Subdivision (b) continues former Section 2025(h)(2) without change, except to conform the
6 cross-reference.

7 **§ 2025.110. Deposition by remote electronic means**

8 2025.110. (a) A person may take, and any person other than the deponent may
9 attend, a deposition by telephone or other remote electronic means.

10 (b) The court may expressly provide that a nonparty deponent may appear at the
11 deposition by telephone if it finds there is good cause and no prejudice to any
12 party. A party deponent must appear at the deposition in person and be in the
13 presence of the deposition officer.

14 (c) The procedures to implement this section shall be established by court order
15 in the specific action or proceeding or by the California Rules of Court.

16 **Comment.** Subdivision (a) of Section 2025.110 continues the first sentence of former Section
17 2025(h)(3) without change.

18 Subdivision (b) continues the second and third sentences of former Section 2025(h)(3) without
19 substantive change.

20 Substantive (c) continues the fourth sentence of former Section 2025(h)(3) without change.

21 **§ 2025.120. Motion for protective order**

22 2025.120. (a) Before, during, or after a deposition, any party, any deponent, or
23 any other affected natural person or organization may promptly move for a
24 protective order. The motion shall be accompanied by a declaration under Section
25 2023.060.

26 (b) The court, for good cause shown, may make any order that justice requires to
27 protect any party, deponent, or other natural person or organization from
28 unwarranted annoyance, embarrassment, or oppression, or undue burden and
29 expense. This protective order may include, but is not limited to, one or more of
30 the following directions:

31 (1) That the deposition not be taken at all.

32 (2) That the deposition be taken at a different time.

33 (3) That a videotape deposition of a treating or consulting physician or of any
34 expert witness, intended for possible use at trial under subdivision (d) of Section
35 2025.300, be postponed until the moving party has had an adequate opportunity to
36 prepare, by discovery deposition of the deponent, or other means, for cross-
37 examination.

38 (4) That the deposition be taken at a place other than that specified in the
39 deposition notice, if it is within a distance permitted by Sections 2025.060 and
40 2025.070.

41 (5) That the deposition be taken only on certain specified terms and conditions.

1 (6) That the deponent's testimony be taken by written, instead of oral,
2 examination.

3 (7) That the method of discovery be interrogatories to a party instead of an oral
4 deposition.

5 (8) That the testimony be recorded in a manner different from that specified in
6 the deposition notice.

7 (9) That certain matters not be inquired into.

8 (10) That the scope of the examination be limited to certain matters.

9 (11) That all or certain of the writings or tangible things designated in the
10 deposition notice not be produced, inspected, or copied.

11 (12) That designated persons, other than the parties to the action and their
12 officers and counsel, be excluded from attending the deposition.

13 (13) That a trade secret or other confidential research, development, or
14 commercial information not be disclosed or be disclosed only to specified persons
15 or only in a specified way.

16 (14) That the parties simultaneously file specified documents enclosed in sealed
17 envelopes to be opened as directed by the court.

18 (15) That the deposition be sealed and thereafter opened only on order of the
19 court.

20 (16) That examination of the deponent be terminated. If an order terminates the
21 examination, the deposition shall not thereafter be resumed, except on order of the
22 court.

23 (c) If the motion for a protective order is denied in whole or in part, the court
24 may order that the deponent provide or permit the discovery against which
25 protection was sought on those terms and conditions that are just.

26 (d) Except as provided in Section 2023.040, the court shall impose a monetary
27 sanction under Article 7 against any party, person, or attorney who unsuccessfully
28 makes or opposes a motion for a protective order.

29 **Comment.** Subdivision (a) of Section 2025.120 continues the first paragraph of former Section
30 2025(i) without substantive change.

31 Subdivision (b)(1)-(b)(15) continue the second through seventeenth paragraphs of former
32 Section 2025(i) without change, except to conform the cross-references. Subdivision (b)(16)
33 continues the third and fourth sentences of former Section 2025(n) without substantive change.

34 Subdivision (c) continues the eighteenth paragraph of former Section 2025(i) without change.

35 Subdivision (d) continues the nineteenth paragraph of former Section 2025(i) without
36 substantive change.

37 **§ 2025.130. Sanctions where party giving notice of deposition fails to attend or proceed**

38 2025.130. Except as provided in Section 2023.040, if the party giving notice of a
39 deposition fails to attend or proceed with it, the court shall impose a monetary
40 sanction under Article 7 against that party, or the attorney for that party, or both,
41 and in favor of any party attending in person or by attorney.

42 **Comment.** Section 2025.130 continues former Section 2025(j)(1) without substantive change.

1 **§ 2025.140. Sanctions where nonparty deponent fails to appear**

2 2025.140. (a) Except as provided in Section 2023.040, if a deponent does not
3 appear for a deposition because the party giving notice of the deposition failed to
4 serve a required deposition subpoena, the court shall impose a monetary sanction
5 under Article 7 against that party, or the attorney for that party, or both, in favor of
6 any other party who, in person or by attorney, attended at the time and place
7 specified in the deposition notice in the expectation that the deponent’s testimony
8 would be taken.

9 (b) If a deponent on whom a deposition subpoena has been served fails to attend
10 a deposition or refuses to be sworn as a witness, the court may impose on the
11 deponent the sanctions described in Section 2020.120.

12 **Comment.** Subdivision (a) of Section 2025.140 continues the first paragraph of former Section
13 2025(j)(2) without substantive change.

14 Subdivision (b) continues the second paragraph of former Section 2025(j)(2) without change,
15 except to conform the cross-reference.

16 ☞ **Staff Note.** As stated in the Comment, subdivision (b) would continue language presently
17 found in Section 2025(j)(2). The provision is not strictly necessary, because Section 2020(h)
18 (proposed Section 2020.120) already states that a deponent who fails to comply with a deposition
19 subpoena is subject to specified sanctions. At this point, however, the staff is not inclined to
20 delete the language from Section 2025.140, as it might serve as a useful cross-reference for courts
21 and practitioners. In addition, Section 2025.140(b) makes clear that sanctions may be available
22 where a nonparty deponent refuses to be sworn as a witness. Section 2020(h) (proposed Section
23 2020.120) is less clear on this point.

24 **§ 2025.150. Sanctions where party deponent fails to appear**

25 2025.150. (a) If, after service of a deposition notice, a party to the action or an
26 officer, director, managing agent, or employee of a party, or a person designated
27 by an organization that is a party under Section 2025.040, without having served a
28 valid objection under Section 2025.090, fails to appear for examination, or to
29 proceed with it, or to produce for inspection any document or tangible thing
30 described in the deposition notice, the party giving the notice may move for an
31 order compelling the deponent’s attendance and testimony, and the production for
32 inspection of any document or tangible thing described in the deposition notice.

33 (b) A motion under subdivision (a) shall comply with both of the following:

34 (1) The motion shall set forth specific facts showing good cause justifying the
35 production for inspection of any document or tangible thing described in the
36 deposition notice.

37 (2) The motion shall be accompanied by a declaration under Section 2023.060,
38 or, when the deponent fails to attend the deposition and produce the documents or
39 things described in the deposition notice, by a declaration stating that the petitioner
40 has contacted the deponent to inquire about the nonappearance.

41 (c) Except as provided in Section 2023.040, if a motion under subdivision (a) is
42 granted, the court shall:

43 (1) Impose a monetary sanction under Article 7 against the deponent or the party
44 with whom the deponent is affiliated.

1 (2) Impose a monetary sanction under Article 7 on motion of any other party
2 who, in person or by attorney, attended at the time and place specified in the
3 deposition notice in the expectation that the deponent’s testimony would be taken.

4 (d) If that party or party-affiliated deponent then fails to obey an order
5 compelling attendance, testimony, and production, the court may make those
6 orders that are just, including the imposition of an issue sanction, an evidence
7 sanction, or a terminating sanction under Article 7 against that party deponent or
8 against the party with whom the deponent is affiliated. In lieu of, or in addition to,
9 this sanction, the court may impose a monetary sanction under Article 7 against
10 that deponent or against the party with whom that party deponent is affiliated, and
11 in favor of any party who, in person or by attorney, attended in the expectation that
12 the deponent’s testimony would be taken pursuant to that order.

13 **Comment.** Subdivision (a) of Section 2025.150 continues the first sentence of former Section
14 2025(j)(3) without change, except to conform the cross-references.

15 Subdivision (b) continues the second sentence of former Section 2025(j)(3) without substantive
16 change.

17 Subdivision (c) continues the third and fourth sentences of former Section 2025(j)(3) without
18 substantive change.

19 Subdivision (d) continues the second paragraph of former Section 2025(j)(3) without change,
20 except to conform the cross-references.

21 ☞ **Staff Note.** The first sentence of Section 2025(j)(3) provides that if a deponent fails to appear
22 or produce documents at a deposition, the party giving notice of the deposition may move for an
23 order compelling the deponent to testify or produce documents. The third and fourth sentences
24 state:

25 If this motion is granted, the court shall also impose a monetary sanction under Section 2023
26 *against the deponent or the party with whom the deponent is affiliated*, unless it finds that the
27 one subject to the sanction acted with substantial justification or that other circumstances
28 make the imposition of the sanction unjust. *On motion of any other party who, in person or*
29 *by attorney, attended at the time and place specified in the deposition notice in the*
30 *expectation that the deponent’s testimony would be taken*, the court shall also impose a
31 monetary sanction under Section 2023, unless it finds that the one subject to the sanction
32 acted with substantial justification or that other circumstances make the imposition of the
33 sanction unjust.

34 (Emphasis added.) Section 2025.150(c) would track this scheme, but it is not well-worded.

35 The quoted sentences describe two monetary sanctions: (1) a sanction “against the deponent or
36 the party with whom the deponent is affiliated,” and (2) a sanction to be awarded “[o]n motion of
37 any other party who, in person or by attorney, attended at the time and place specified in the
38 deposition notice in the expectation that the deponent’s testimony would be taken.” Presumably,
39 the sanction to be awarded “[o]n motion of any other party” is also to be awarded “against the
40 deponent or the party with whom the deponent is affiliated.” Thus, the two sanctions do not differ
41 in this respect. Rather, the distinction appears to be that one is to be awarded in favor of the party
42 who noticed the deposition and the other is to be awarded in favor of “any other party who, in
43 person or by attorney, attended at the time and place specified in the deposition notice in the
44 expectation that the deponent’s testimony would be taken.”

45 That could be made more clear by revising Section 2025.150(c) to read:

46 (c) Except as provided in Section 2023.040,

1 (1) If a motion under subdivision (a) is granted, the court shall impose a monetary sanction
2 under Article 7 in favor of the party who noticed the deposition and against the deponent or
3 the party with whom the deponent is affiliated.

4 (2) On motion of any other party who, in person or by attorney, attended at the time and
5 place specified in the deposition notice in the expectation that the deponent's testimony
6 would be taken, the court shall impose a monetary sanction under Article 7 in favor of that
7 party and against the deponent or the party with whom the deponent is affiliated.

8 We would solicit comment on this alternative approach, as well as on the approach used in the
9 draft.

10 **§ 2025.160. Deposition officer**

11 2025.160. Except as provided in Section 2020.070, the deposition shall be
12 conducted under the supervision of an officer who is authorized to administer an
13 oath and is subject to all of the following requirements:

14 (a) The officer shall not be financially interested in the action and shall not be a
15 relative or employee of any attorney of the parties, or of any of the parties.

16 (b) Services and products offered or provided by the deposition officer or the
17 entity providing the services of the deposition officer to any party or to any party's
18 attorney or third party who is financing all or part of the action shall be offered to
19 all parties or their attorneys attending the deposition. No service or product may be
20 offered or provided by the deposition officer or by the entity providing the services
21 of the deposition officer to any party or any party's attorney or third party who is
22 financing all or part of the action unless the service or product is offered or
23 provided to all parties or their attorneys attending the deposition. All services and
24 products offered or provided shall be made available at the same time to all parties
25 or their attorneys.

26 (c) The deposition officer or the entity providing the services of the deposition
27 officer shall not provide to any party or any party's attorney or third party who is
28 financing all or part of the action any service or product consisting of the
29 deposition officer's notations or comments regarding the demeanor of any witness,
30 attorney, or party present at the deposition. The deposition officer or entity
31 providing the services of the deposition officer shall not collect any personal
32 identifying information about the witness as a service or product to be provided to
33 any party or third party who is financing all or part of the action.

34 (d) Upon the request of any party or any party's attorney attending a deposition,
35 any party or any party's attorney attending the deposition shall enter in the record
36 of the deposition all services and products made available to that party or party's
37 attorney or third party who is financing all or part of the action by the deposition
38 officer or by the entity providing the services of the deposition officer. A party in
39 the action who is not represented by an attorney shall be informed by the noticing
40 party or the party's attorney that the unrepresented party may request this
41 statement.

1 (e) Any objection to the qualifications of the deposition officer is waived unless
2 made before the deposition begins or as soon thereafter as the ground for that
3 objection becomes known or could be discovered by reasonable diligence.

4 (f) Violation of this section by any person may result in a civil penalty of up to
5 five thousand dollars (\$5,000) imposed by a court of competent jurisdiction.

6 **Comment.** The introductory clause of Section 2025.160 continues the introductory clause of
7 former Section 2025(k) without change, except to conform the cross-reference.

8 Subdivision (a) continues former Section 2025(k)(1) without change.

9 Subdivision (b) continues former Section 2025(k)(2) without change.

10 Subdivision (c) continues former Section 2025(k)(3) without change.

11 Subdivision (d) continues former Section 2025(k)(4) without change.

12 Subdivision (e) continues former Section 2025(k)(5) without substantive change.

13 Subdivision (f) continues former Section 2025(v) without substantive change.

14 **§ 2025.170. Conduct of deposition**

15 2025.170. (a) The deposition officer shall put the deponent under oath.

16 (b) Unless the parties agree or the court orders otherwise, the testimony, as well
17 as any stated objections, shall be taken stenographically.

18 (c) The party noticing the deposition may also record the testimony by audiotape
19 or videotape if the notice of deposition stated an intention also to record the
20 testimony by either of those methods, or if all the parties agree that the testimony
21 may also be recorded by either of those methods. Any other party, at that party's
22 expense, may make a simultaneous audiotape or videotape record of the
23 deposition, provided that other party promptly, and in no event less than three
24 calendar days before the date for which the deposition is scheduled, serves a
25 written notice of this intention to audiotape or videotape the deposition testimony
26 on the party or attorney who noticed the deposition, on all other parties or
27 attorneys on whom the deposition notice was served under Section 2025.050, and
28 on any deponent whose attendance is being compelled by a deposition subpoena
29 under Article 6. If this notice is given three calendar days before the deposition
30 date, it shall be made by personal service under Section 1011.

31 (d) Examination and cross-examination of the deponent shall proceed as
32 permitted at trial under the provisions of the Evidence Code.

33 (e) In lieu of participating in the oral examination, parties may transmit written
34 questions in a sealed envelope to the party taking the deposition for delivery to the
35 deposition officer, who shall unseal the envelope and propound them to the
36 deponent after the oral examination has been completed.

37 **Comment.** Subdivision (a) of Section 2025.170 continues the first sentence of former Section
38 2025(l)(1) without change.

39 Subdivision (b) continues the second sentence of former Section 2025(l)(1) without change.

40 Subdivision (c) continues the third, fourth, and fifth sentences of former Section 2025(l)(1)
41 without change, except to conform the cross-references.

42 Subdivision (d) continues the sixth sentence of former Section 2025(l)(1) without change.

43 Subdivision (e) continues former Section 2025(l)(3) without change.

1 **§ 2025.180. Deposition recorded by audiotape or videotape**

2 2025.180. If a deposition is being recorded by means of audiotape or videotape,
3 the following procedure shall be observed:

4 (a) The area used for recording the deponent's oral testimony shall be suitably
5 large, adequately lighted, and reasonably quiet.

6 (b) The operator of the recording equipment shall be competent to set up,
7 operate, and monitor the equipment in the manner prescribed in this section.
8 Except as provided in subdivision (c), the operator may be an employee of the
9 attorney taking the deposition unless the operator is also the deposition officer.

10 (c) If a videotape of deposition testimony is to be used under subdivision (d) of
11 Section 2025.300, the operator of the recording equipment shall be a person who is
12 authorized to administer an oath, and shall not be financially interested in the
13 action or be a relative or employee of any attorney of any of the parties, unless all
14 parties attending the deposition agree on the record to waive these qualifications
15 and restrictions.

16 (d) Services and products offered or provided by the deposition officer or the
17 entity providing the services of the deposition officer to any party or to any party's
18 attorney or third party who is financing all or part of the action shall be offered or
19 provided to all parties or their attorneys attending the deposition. No service or
20 product may be offered or provided by the deposition officer or by the entity
21 providing the services of the deposition officer to any party or any party's attorney
22 or third party who is financing all or part of the action unless the service or product
23 is offered or provided to all parties or their attorneys attending the deposition. All
24 services and products offered or provided shall be made available at the same time
25 to all parties or their attorneys.

26 (e) The deposition officer or the entity providing the services of the deposition
27 officer shall not provide to any party or any other person or entity any service or
28 product consisting of the deposition officer's notations or comments regarding the
29 demeanor of any witness, attorney, or party present at the deposition. The
30 deposition officer or the entity providing the services of the deposition officer shall
31 not collect any personal identifying information about the witness as a service or
32 product to be provided to any party or third party who is financing all or part of the
33 action.

34 (f) Upon the request of any party or any party's attorney attending a deposition,
35 any party or any party's attorney attending the deposition shall enter in the record
36 of the deposition all services and products made available to that party or party's
37 attorney or third party who is financing all or part of the action by the deposition
38 officer or by the entity providing the services of the deposition officer. A party in
39 the action who is not represented by an attorney shall be informed by the noticing
40 party that the unrepresented party may request this statement.

41 (g) The operator shall not distort the appearance or the demeanor of participants
42 in the deposition by the use of camera or sound recording techniques.

1 (h) The deposition shall begin with an oral or written statement on camera or on
2 the audiotape that includes the operator's name and business address, the name
3 and business address of the operator's employer, the date, time, and place of the
4 deposition, the caption of the case, the name of the deponent, a specification of the
5 party on whose behalf the deposition is being taken, and any stipulations by the
6 parties.

7 (i) Counsel for the parties shall identify themselves on camera or on the
8 audiotape.

9 (j) The oath shall be administered to the deponent on camera or on the audiotape.

10 (k) If the length of a deposition requires the use of more than one unit of tape,
11 the end of each unit and the beginning of each succeeding unit shall be announced
12 on camera or on the audiotape.

13 (l) At the conclusion of a deposition, a statement shall be made on camera or on
14 the audiotape that the deposition is ended and shall set forth any stipulations made
15 by counsel concerning the custody of the audiotape or videotape recording and the
16 exhibits, or concerning other pertinent matters.

17 (m) A party intending to offer an audiotaped or videotaped recording of a
18 deposition in evidence under Section 2025.300 shall notify the court and all parties
19 in writing of that intent and of the parts of the deposition to be offered. That notice
20 shall be given within sufficient time for objections to be made and ruled on by the
21 judge to whom the case is assigned for trial or hearing, and for any editing of the
22 tape. Objections to all or part of the deposition shall be made in writing. The court
23 may permit further designations of testimony and objections as justice may
24 require. With respect to those portions of an audiotaped or videotaped deposition
25 that are not designated by any party or that are ruled to be objectionable, the court
26 may order that the party offering the recording of the deposition at the trial or
27 hearing suppress those portions, or that an edited version of the deposition tape be
28 prepared for use at the trial or hearing. The original audiotape or videotape of the
29 deposition shall be preserved unaltered. If no stenographic record of the deposition
30 testimony has previously been made, the party offering a videotape or an
31 audiotape recording of that testimony under Section 2025.300 shall accompany
32 that offer with a stenographic transcript prepared from that recording.

33 **Comment.** The introductory clause of Section 2025.180 continues the introductory clause of
34 former Section 2025(l)(2) without substantive change.

35 Subdivision (a) continues former Section 2025(l)(2)(A) without change.

36 Subdivision (b) continues the first and second sentences of former Section 2025(l)(2)(B)
37 without substantive change.

38 Subdivision (c) continues the third sentence of former Section 2025(l)(2)(B) without
39 substantive change.

40 Subdivision (d) continues the fourth, fifth, and sixth sentences of former Section 2025(l)(2)(B)
41 without change.

42 Subdivision (e) continues the seventh and eighth sentences of former Section 2025(l)(2)(B)
43 without change.

44 Subdivision (f) continues the ninth and tenth sentences of former Section 2025(l)(2)(B) without
45 change.

- 1 Subdivision (g) continues former Section 2025(l)(2)(C) without change.
- 2 Subdivision (h) continues former Section 2025(l)(2)(D) without change.
- 3 Subdivision (i) continues former Section 2025(l)(2)(E) without change.
- 4 Subdivision (j) continues former Section 2025(l)(2)(F) without change.
- 5 Subdivision (k) continues former Section 2025(l)(2)(G) without change.
- 6 Subdivision (l) continues former Section 2025(l)(2)(H) without change.
- 7 Subdivision (m) continues former Section 2025(l)(2)(I) without substantive change.

8 **§ 2025.190. Waiver of error or irregularity**

9 2025.190. (a) The protection of information from discovery on the ground that it
10 is privileged or that it is a protected work product under Article 4 is waived unless
11 a specific objection to its disclosure is timely made during the deposition.

12 (b) Errors and irregularities of any kind occurring at the oral examination that
13 might be cured if promptly presented are waived unless a specific objection to
14 them is timely made during the deposition. These errors and irregularities include,
15 but are not limited to, those relating to the manner of taking the deposition, to the
16 oath or affirmation administered, to the conduct of a party, attorney, deponent, or
17 deposition officer, or to the form of any question or answer. Unless the objecting
18 party demands that the taking of the deposition be suspended to permit a motion
19 for a protective order under Section 2025.200, the deposition shall proceed subject
20 to the objection.

21 (c) Objections to the competency of the deponent, or to the relevancy,
22 materiality, or admissibility at trial of the testimony or of the materials produced
23 are unnecessary and are not waived by failure to make them before or during the
24 deposition.

25 (d) If a deponent fails to answer any question or to produce any document or
26 tangible thing under the deponent's control that is specified in the deposition
27 notice or a deposition subpoena, the party seeking that answer or production may
28 adjourn the deposition or complete the examination on other matters without
29 waiving the right at a later time to move for an order compelling that answer or
30 production under Section 2025.210.

31 **Comment.** Subdivision (a) of Section 2025.190 continues former Section 2025(m)(1) without
32 change, except to conform the cross-reference.

33 Subdivision (b) continues former Section 2025(m)(2) without change, except to conform the
34 cross-references.

35 Subdivision (c) continues former Section 2025(m)(3) without change.

36 Subdivision (d) continues former Section 2025(m)(4) without change, except to conform the
37 cross-reference.

38 **§ 2025.200. Suspension of deposition**

39 2025.200. The deposition officer shall not suspend the taking of testimony
40 without stipulation of the party conducting the deposition and the deponent unless
41 any party attending the deposition or the deponent demands the taking of
42 testimony be suspended to enable that party or deponent to move for a protective
43 order under Section 2025.120 on the ground that the examination is being

1 conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or
2 oppresses that deponent or party.

3 **Comment.** Section 2025.200 continues the first sentence of former Section 2025(n) without
4 substantive change.

5 **§ 2025.210. Motion to compel**

6 2025.210. (a) If a deponent fails to answer any question or to produce any
7 document or tangible thing under the deponent's control that is specified in the
8 deposition notice or a deposition subpoena, the party seeking discovery may move
9 the court for an order compelling that answer or production.

10 (b) This motion shall be made no later than 60 days after the completion of the
11 record of the deposition, and shall be accompanied by a declaration under Section
12 2023.060.

13 (c) Notice of this motion shall be given to all parties, and to the deponent either
14 orally at the examination, or by subsequent service in writing. If the notice of the
15 motion is given orally, the deposition officer shall direct the deponent to attend a
16 session of the court at the time specified in the notice.

17 (d) Not less than five days before the hearing on this motion, the moving party
18 shall lodge with the court a certified copy of any parts of the stenographic
19 transcript of the deposition that are relevant to the motion. If a deposition is
20 recorded by audiotape or videotape, the moving party is required to lodge a
21 certified copy of a transcript of any parts of the deposition that are relevant to the
22 motion.

23 (e) If the court determines that the answer or production sought is subject to
24 discovery, it shall order that the answer be given or the production be made on the
25 resumption of the deposition.

26 (f) Except as provided in Section 2023.040, the court shall impose a monetary
27 sanction under Article 7 against any party, person, or attorney who unsuccessfully
28 makes or opposes a motion to compel answer or production.

29 (g) If a deponent fails to obey an order entered under this section, the failure may
30 be considered a contempt of court. In addition, if the disobedient deponent is a
31 party to the action or an officer, director, managing agent, or employee of a party,
32 the court may make those orders that are just against the disobedient party, or
33 against the party with whom the disobedient deponent is affiliated, including the
34 imposition of an issue sanction, an evidence sanction, or a terminating sanction
35 under Article 7. In lieu of, or in addition to, this sanction, the court may impose a
36 monetary sanction under Article 7 against that party deponent or against any party
37 with whom the deponent is affiliated.

38 **Comment.** Subdivision (a) of Section 2025.210 continues the first sentence of former Section
39 2025(o) without change.

40 Subdivision (b) continues the second sentence of former Section 2025(o) without substantive
41 change.

42 Subdivision (c) continues the third and fourth sentences of former Section 2025(o) without
43 change.

1 Subdivision (d) continues the fifth and sixth sentences of former Section 2025(o) without
2 substantive change.

3 Subdivision (e) continues the seventh sentence of former Section 2025(o) without change.

4 Subdivision (f) continues the second paragraph of former Section 2025(o) without substantive
5 change.

6 Subdivision (g) continues the third paragraph of former Section 2025(o) without change, except
7 to conform the cross-references.

8 **§ 2025.220. Transcription of testimony**

9 2025.220. (a) Unless the parties agree otherwise, the testimony at any deposition
10 recorded by stenographic means shall be transcribed.

11 (b) The party noticing the deposition shall bear the cost of that transcription,
12 unless the court, on motion and for good cause shown, orders that the cost be
13 borne or shared by another party.

14 (c) Notwithstanding subdivision (b) of Section 2025.160, any other party, at that
15 party's expense, may obtain a copy of the transcript.

16 (d) If the deposition officer receives a request from a party for an original or a
17 copy of the deposition transcript, or any portion thereof, and the document will be
18 available to that party before the time the original or copy would be available to
19 any other party, the deposition officer shall immediately notify all other parties
20 attending the deposition of the request, and shall, upon request by any party other
21 than the party making the original request, make that copy of the full or partial
22 deposition transcript available to all parties at the same time.

23 (e) Stenographic notes of depositions shall be retained by the reporter for a
24 period of not less than eight years from the date of the deposition, where no
25 transcript is produced, and not less than one year from the date on which the
26 transcript is produced. Those notes may be either on paper or electronic media, as
27 long as it allows for satisfactory production of a transcript at any time during the
28 periods specified.

29 (f) At the request of any other party to the action, including a party who did not
30 attend the taking of the deposition testimony, any party who records or causes the
31 recording of that testimony by means of audiotape or videotape shall promptly do
32 both of the following:

33 (1) Permit that other party to hear the audiotape or to view the videotape.

34 (2) Furnish a copy of the audiotape or videotape to that other party on receipt of
35 payment of the reasonable cost of making that copy of the tape.

36 (g) If the testimony at the deposition is recorded both stenographically, and by
37 audiotape or videotape, the stenographic transcript is the official record of that
38 testimony for the purpose of the trial and any subsequent hearing or appeal.

39 **Comment.** Subdivision (a) of Section 2025.220 continues the first sentence of former Section
40 2025(p) without change.

41 Subdivision (b) continues the second sentence of former Section 2025(p) without change.

42 Subdivision (c) continues the third sentence of former Section 2025(p) without change, except
43 to conform the cross-reference.

1 Subdivision (d) continues the fourth sentence of former Section 2025(p) without substantive
2 change.

3 Subdivision (e) continues the fifth and sixth sentences of former Section 2025(p) without
4 change.

5 Subdivision (f) continues the seventh sentence of former Section 2025(p) without substantive
6 change.

7 Subdivision (g) continues the second paragraph of former Section 2025(p) without change.

8 **§ 2025.230. Deponent's review of transcript**

9 2025.230. (a) If the deposition testimony is stenographically recorded, the
10 deposition officer shall send written notice to the deponent and to all parties
11 attending the deposition when the original transcript of the testimony for each
12 session of the deposition is available for reading, correcting, and signing, unless
13 the deponent and the attending parties agree on the record that the reading,
14 correcting, and signing of the transcript of the testimony will be waived or that the
15 reading, correcting, and signing of a transcript of the testimony will take place
16 after the entire deposition has been concluded or at some other specific time.

17 (b) For 30 days following each notice under subdivision (a), unless the attending
18 parties and the deponent agree on the record or otherwise in writing to a longer or
19 shorter time period, the deponent may change the form or the substance of the
20 answer to a question, and may either approve the transcript of the deposition by
21 signing it, or refuse to approve the transcript by not signing it.

22 (c) Alternatively, within this same period, the deponent may change the form or
23 the substance of the answer to any question and may approve or refuse to approve
24 the transcript by means of a letter to the deposition officer signed by the deponent
25 which is mailed by certified or registered mail with return receipt requested. A
26 copy of that letter shall be sent by first-class mail to all parties attending the
27 deposition.

28 (d) For good cause shown, the court may shorten the 30-day period for making
29 changes, approving, or refusing to approve the transcript.

30 (e) The deposition officer shall indicate on the original of the transcript, if the
31 deponent has not already done so at the office of the deposition officer, any action
32 taken by the deponent and indicate on the original of the transcript, the deponent's
33 approval of, or failure or refusal to approve, the transcript. The deposition officer
34 shall also notify in writing the parties attending the deposition of any changes
35 which the deponent timely made in person.

36 (f) If the deponent fails or refuses to approve the transcript within the allotted
37 period, the deposition shall be given the same effect as though it had been
38 approved, subject to any changes timely made by the deponent.

39 (g) Notwithstanding subdivision (f), on a seasonable motion to suppress the
40 deposition, accompanied by a declaration under Section 2023.060, the court may
41 determine that the reasons given for the failure or refusal to approve the transcript
42 require rejection of the deposition in whole or in part.

1 (h) Except as provided in Section 2023.040, the court shall impose a monetary
2 sanction under Article 7 against any party, person, or attorney who unsuccessfully
3 makes or opposes a motion to suppress a deposition [under this section].

4 **Comment.** Subdivision (a) of Section 2025.230 continues the first sentence of former Section
5 2025(q)(1) without change.

6 Subdivision (b) continues the second sentence of former Section 2025(q)(1) without substantive
7 change.

8 Subdivision (c) continues the first and second sentences of the second paragraph of former
9 Section 2025(q)(1) without change.

10 Subdivision (d) continues the third sentence of the second paragraph of former Section
11 2025(q)(1) without change.

12 Subdivision (e) continues the first and second sentences of the third paragraph of former
13 Section 2025(q)(1) without change.

14 Subdivision (f) continues the third sentence of the third paragraph of former Section 2025(q)(1)
15 without change.

16 Subdivision (g) continues the fourth sentence of the third paragraph of former Section
17 2025(q)(1) without substantive change.

18 Subdivision (h) continues the fourth paragraph of former Section 2025(q)(1) without
19 substantive change.

20 ☞ **Staff Note.** The fourth paragraph of Section 2025(q)(1) states: “The court shall impose a
21 monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully
22 makes or opposes *a motion to suppress a deposition*, unless it finds that the one subject to the
23 sanction acted with substantial justification or that other circumstances make the imposition of the
24 sanction unjust.” (Emphasis added.) From this language, it is unclear whether the provision is
25 meant to apply to any motion to suppress a deposition, or only to a motion to suppress a
26 stenographically recorded deposition. The staff presumes the latter, because otherwise language
27 in Section 2025(q)(2) would be surplusage. We would solicit comment on whether the reference
28 to a “motion to suppress a deposition” should be changed to “motion to suppress a deposition
29 under this section,” as shown in brackets in Section 2025.230(h).

30 **§ 2025.240. Deponent’s review of recording**

31 2025.240. (a) If there is no stenographic transcription of the deposition, the
32 deposition officer shall send written notice to the deponent and to all parties
33 attending the deposition that the recording is available for review, unless the
34 deponent and all these parties agree on the record to waive the hearing or viewing
35 of an audiotape or videotape recording of the testimony.

36 (b) For 30 days following a notice under subdivision (a), the deponent, either in
37 person or by signed letter to the deposition officer, may change the substance of
38 the answer to any question.

39 (c) The deposition officer shall set forth in a writing to accompany the recording
40 any changes made by the deponent, as well as either the deponent’s signature
41 identifying the deposition as the deponent’s own, or a statement of the deponent’s
42 failure to supply the signature, or to contact the officer within the period
43 prescribed by subdivision (b).

44 (d) When a deponent fails to contact the officer within the period prescribed by
45 subdivision (b), or expressly refuses by a signature to identify the deposition as the
46 deponent’s own, the deposition shall be given the same effect as though signed.

1 (e) Notwithstanding subdivision (d), on a reasonable motion to suppress the
2 deposition, accompanied by a declaration under Section 2023.060, the court may
3 determine that the reasons given for the refusal to sign require rejection of the
4 deposition in whole or in part.

5 (f) Except as provided in Section 2023.040, the court shall impose a monetary
6 sanction under Article 7 against any party, person, or attorney who unsuccessfully
7 makes or opposes a motion to suppress a deposition [under this section].

8 **Comment.** Subdivision (a) of Section 2025.240 continues the first sentence of former Section
9 2025(q)(2) without change.

10 Subdivision (b) continues the second sentence of former Section 2025(q)(2) without substantive
11 change.

12 Subdivision (c) continues the first sentence of the second paragraph of former Section
13 2025(q)(2) without substantive change.

14 Subdivision (d) continues the second sentence of the second paragraph of former Section
15 2025(q)(2) without substantive change.

16 Subdivision (e) continues the third sentence of the second paragraph of former Section
17 2025(q)(2) without substantive change.

18 Subdivision (f) continues the third paragraph of former Section 2025(q)(2) without substantive
19 change.

20 ☞ **Staff Note.** The third paragraph of Section 2025(q)(2) states: “The court shall impose a
21 monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully
22 makes or opposes *a motion to suppress a deposition*, unless it finds that the one subject to the
23 sanction acted with substantial justification or that other circumstances make the imposition of the
24 sanction unjust.” (Emphasis added.) From this language, it is unclear whether the provision is
25 meant to apply to any motion to suppress a deposition, or only to a motion to suppress a
26 deposition that is not stenographically recorded. The staff presumes the latter, because otherwise
27 language in Section 2025(q)(1) would be surplusage. We would solicit comment on whether the
28 reference to a “motion to suppress a deposition” should be changed to “motion to suppress a
29 deposition under this section,” as shown in brackets in Section 2025.240(f).

30 § 2025.250. Certification of transcript

31 2025.250. (a) The deposition officer shall certify on the transcript of the
32 deposition, or in a writing accompanying an audiotaped or videotaped deposition
33 as described in Section 2025.240, that the deponent was duly sworn and that the
34 transcript or recording is a true record of the testimony given.

35 (b) When prepared as a rough draft transcript, the transcript of the deposition
36 may not be certified and may not be used, cited, or transcribed as the certified
37 transcript of the deposition proceedings. The rough draft transcript may not be
38 cited or used in any way or at any time to rebut or contradict the certified transcript
39 of deposition proceedings as provided by the deposition officer.

40 **Comment.** Subdivision (a) of Section 2025.250 continues former Section 2025(r)(1) without
41 change, except to conform the cross-reference.

42 Subdivision (b) continues former Section 2025(r)(2) without change.

43 § 2025.260. Sealing of transcript

44 2025.260. (a) The certified transcript of a deposition shall not be filed with the
45 court. Instead, the deposition officer shall securely seal that transcript in an

1 envelope or package endorsed with the title of the action and marked: “Deposition
2 of (here insert name of deponent),” and shall promptly transmit it to the attorney
3 for the party who noticed the deposition. This attorney shall store it under
4 conditions that will protect it against loss, destruction, or tampering.

5 (b) The attorney to whom the transcript of a deposition is transmitted shall retain
6 custody of it until six months after final disposition of the action. At that time, the
7 transcript may be destroyed, unless the court, on motion of any party and for good
8 cause shown, orders that the transcript be preserved for a longer period.

9 **Comment.** Subdivision (a) of Section 2025.260 continues the first paragraph of former Section
10 2025(s)(1) without change.

11 Subdivision (b) continues the second paragraph of former Section 2025(s)(1) without change.

12 **§ 2025.270. Sealing of audiotape or videotape record**

13 2025.270. (a) An audiotape or videotape record of deposition testimony,
14 including a certified tape made by an operator qualified under subdivisions (b) and
15 (c) of Section 2025.180, shall not be filed with the court. Instead, the operator shall
16 retain custody of that record and shall store it under conditions that will protect it
17 against loss, destruction, or tampering, and preserve as far as practicable the
18 quality of the tape and the integrity of the testimony and images it contains.

19 (b) At the request of any party to the action, including a party who did not attend
20 the taking of the deposition testimony, or at the request of the deponent, that
21 operator shall promptly do both of the following:

22 (1) Permit the one making the request to hear or to view the tape on receipt of
23 payment of a reasonable charge for providing the facilities for hearing or viewing
24 the tape.

25 (2) Furnish a copy of the audiotape or the videotape recording to the one making
26 the request on receipt of payment of the reasonable cost of making that copy of the
27 tape.

28 (c) The attorney or operator who has custody of an audiotape or videotape record
29 of deposition testimony shall retain custody of it until six months after final
30 disposition of the action. At that time, the audiotape or videotape may be
31 destroyed or erased, unless the court, on motion of any party and for good cause
32 shown, orders that the tape be preserved for a longer period.

33 **Comment.** Subdivision (a) of Section 2025.270 continues the first paragraph of former Section
34 2025(s)(2) without change, except to conform the cross-reference.

35 Subdivision (b) continues the second paragraph of former Section 2025(s)(2) without
36 substantive change.

37 Subdivision (c) continues the third paragraph of former Section 2025(s)(2) without change.

38 **§ 2025.280. Copy of transcript, videotape, or other recording for nonparty**

39 2025.280. (a) Notwithstanding subdivision (b) of Section 2025.160, unless the
40 court issues an order to the contrary, a copy of the transcript, videotape, or other
41 recording of testimony at the deposition, if still in the possession of the deposition

1 officer, shall be made available by the deposition officer to any person requesting
2 a copy, on payment of a reasonable charge set by the deposition officer.

3 (b) If a copy is requested from the deposition officer, the deposition officer shall
4 mail a notice to all parties attending the deposition and to the deponent at the
5 deponent's last known address advising them of all of the following:

6 (1) The copy is being sought.

7 (2) The name of the person requesting the copy.

8 (3) The right to seek a protective order under Section 2025.120.

9 (c) If a protective order is not served on the deposition officer within 30 days of
10 the mailing of the notice, the deposition officer shall make the copy available to
11 the person requesting the copy.

12 (d) This section shall apply only to recorded testimony taken at depositions
13 occurring on or after January 1, 1998.

14 **Comment.** Subdivision (a) of Section 2025.270 continues former Section 2025.5(a) without
15 substantive change.

16 Subdivision (b) continues the first sentence of former Section 2025.5(b) without substantive
17 change.

18 Subdivision (c) continues the second sentence of former Section 2025.5(b) without change.

19 Subdivision (d) continues former Section 2025.5(c) without change.

20 **§ 2025.290. Subsequent deposition of same deponent**

21 2025.290. (a) Once any party has taken the deposition of any natural person,
22 including that of a party to the action, neither the party who gave, nor any other
23 party who has been served with a deposition notice pursuant to Section 2025.030
24 may take a subsequent deposition of that deponent.

25 (b) Notwithstanding subdivision (a), for good cause shown, the court may grant
26 leave to take a subsequent deposition, and the parties, with the consent of any
27 deponent who is not a party, may stipulate that a subsequent deposition be taken.

28 (c) This section does not preclude taking one subsequent deposition of a natural
29 person who has previously been examined under either or both of the following
30 circumstances:

31 (1) The person was examined as a result of that person's designation to testify on
32 behalf of an organization under Section 2025.040.

33 (2) The person was examined pursuant to a court order under Section 485.230,
34 for the limited purpose of discovering pursuant to Section 485.230 the identity,
35 location, and value of property in which the deponent has an interest.

36 (d) This section does not authorize the taking of more than one subsequent
37 deposition for the limited purpose of Section 485.230.

38 **Comment.** Subdivision (a) of Section 2025.290 continues the first sentence of former Section
39 2025(t) without change, except to conform the cross-reference.

40 Subdivision (b) continues the second sentence of former Section 2025(t) without substantive
41 change.

42 Subdivision (c) continues the third sentence of former Section 2025(t) without substantive
43 change.

1 Subdivision (d) continues the fourth sentence of former Section 2025(t) without substantive
2 change.

3 **§ 2025.300. Use of deposition testimony**

4 2025.300. At the trial or any other hearing in the action, any part or all of a
5 deposition may be used against any party who was present or represented at the
6 taking of the deposition, or who had due notice of the deposition and did not serve
7 a valid objection under Section 2025.090, so far as admissible under the rules of
8 evidence applied as though the deponent were then present and testifying as a
9 witness, in accordance with the following provisions:

10 (a) Any party may use a deposition for the purpose of contradicting or
11 impeaching the testimony of the deponent as a witness, or for any other purpose
12 permitted by the Evidence Code.

13 (b) An adverse party may use for any purpose, a deposition of a party to the
14 action, or of anyone who at the time of taking the deposition was an officer,
15 director, managing agent, employee, agent, or designee under Section 2025.040 of
16 a party. It is not ground for objection to the use of a deposition of a party under
17 this paragraph by an adverse party that the deponent is available to testify, has
18 testified, or will testify at the trial or other hearing.

19 (c) Any party may use for any purpose the deposition of any person or
20 organization, including that of any party to the action, if the court finds any of the
21 following:

22 (1) The deponent resides more than 150 miles from the place of the trial or other
23 hearing.

24 (2) The deponent, without the procurement or wrongdoing of the proponent of
25 the deposition for the purpose of preventing testimony in open court, will not to
26 testify in court for one or more of the following reasons:

27 (A) The deponent is exempted or precluded on the ground of privilege from
28 testifying concerning the matter to which the deponent's testimony is relevant.

29 (B) The deponent is disqualified from testifying.

30 (C) The deponent is dead or unable to attend or testify because of existing
31 physical or mental illness or infirmity.

32 (D) The deponent is absent from the trial or other hearing and the court is unable
33 to compel the deponent's attendance by its process.

34 (E) The deponent is absent from the trial or other hearing and the proponent of
35 the deposition has exercised reasonable diligence but has been unable to procure
36 the deponent's attendance by the court's process.

37 (3) Exceptional circumstances exist that make it desirable to allow the use of any
38 deposition in the interests of justice and with due regard to the importance of
39 presenting the testimony of witnesses orally in open court.

40 (d) Any party may use a videotape deposition of a treating or consulting
41 physician or of any expert witness even though the deponent is available to testify
42 if the deposition notice under Section 2025.030 reserved the right to use the

1 deposition at trial, and if that party has complied with subdivision (m) of Section
2 2025.180.

3 (e) Subject to the requirements of this article, a party may offer in evidence all or
4 any part of a deposition, and if the party introduces only part of the deposition, any
5 other party may introduce any other parts that are relevant to the parts introduced.

6 (f) Substitution of parties does not affect the right to use depositions previously
7 taken.

8 (g) When an action has been brought in any court of the United States or of any
9 state, and another action involving the same subject matter is subsequently brought
10 between the same parties or their representatives or successors in interest, all
11 depositions lawfully taken and duly filed in the initial action may be used in the
12 subsequent action as if originally taken in that subsequent action. A deposition
13 previously taken may also be used as permitted by the Evidence Code.

14 **Comment.** The introductory clause of Section 2025.300 continues the first paragraph of former
15 Section 2025(u) without change, except to conform the cross-reference.

16 Subdivision (a) continues former Section 2025(u)(1) without change.

17 Subdivision (b) continues former Section 2025(u)(2) without change, except to conform the
18 cross-reference.

19 Subdivision (c) continues former Section 2025(u)(3) without substantive change.

20 Subdivision (d) continues former Section 2025(u)(4) without change, except to conform the
21 cross-reference.

22 Subdivision (e) continues former Section 2025(u)(5) without substantive change.

23 Subdivision (f) continues former Section 2025(u)(6) without change.

24 Subdivision (g) continues former Section 2025(u)(7) without change.

25 Article 10. Oral Deposition Outside California

26 § 2026.010. Oral deposition in another state or territory of the United States

27 2026.010. (a) Any party may obtain discovery by taking an oral deposition, as
28 described in Section 2025.010, in another state of the United States, or in a
29 territory or an insular possession subject to its jurisdiction. Except as modified in
30 this section, the procedures for taking oral depositions in California set forth in
31 Article 9 apply to an oral deposition taken in another state of the United States, or
32 in a territory or an insular possession subject to its jurisdiction.

33 (b) If a deponent is a party to the action or an officer, director, managing agent,
34 or employee of a party, the service of the deposition notice is effective to compel
35 that deponent to attend and to testify, as well as to produce any document or
36 tangible thing for inspection and copying. The deposition notice shall specify a
37 place in the state, territory, or insular possession of the United States that is within
38 75 miles of the residence or a business office of a deponent.

39 (c) If the deponent is not a party to the action or an officer, director, managing
40 agent, or employee of a party, a party serving a deposition notice under this section
41 shall use any process and procedures required and available under the laws of the
42 state, territory, or insular possession where the deposition is to be taken to compel

1 the deponent to attend and to testify, as well as to produce any document or
2 tangible thing for inspection, copying, and any related activity.

3 (d) A deposition taken under this section shall be conducted in either of the
4 following ways:

5 (1) Under the supervision of a person who is authorized to administer oaths by
6 the laws of the United States or those of the place where the examination is to be
7 held, and who is not otherwise disqualified under Section 2025.160 and
8 subdivisions (b) and (c) of Section 2025.180.

9 (2) Before a person appointed by the court.

10 (e) An appointment under subdivision (d) is effective to authorize that person to
11 administer oaths and to take testimony.

12 (f) On request, the clerk of the court shall issue a commission authorizing the
13 deposition in another state or place. The commission shall request that process
14 issue in the place where the examination is to be held, requiring attendance and
15 enforcing the obligations of the deponents to produce documents and answer
16 questions. The commission shall be issued by the clerk to any party in any action
17 pending in its venue without a noticed motion or court order. The commission may
18 contain such terms as are required by the foreign jurisdiction to initiate the
19 process. If a court order is required by the foreign jurisdiction, an order for a
20 commission may be obtained by ex parte application.

21 **Comment.** Subdivision (a) of Section 2026.010 continues former Section 2026(a) without
22 change, except to conform the cross-references.

23 Subdivision (b) continues former Section 2026(b)(1) without change.

24 Subdivision (c) continues former Section 2026(b)(2) without change.

25 Subdivision (d) continues the first sentence of former Section 2026(c) without substantive
26 change.

27 Subdivision (e) continues the second sentence of former Section 2026(c) without substantive
28 change.

29 Subdivision (f) continues the third, fourth, fifth, sixth, and seventh sentences of former Section
30 2026(c) without change.

31 **§ 2026.020. Oral deposition in foreign nation**

32 2026.020 (a) Any party may obtain discovery by taking an oral deposition, as
33 described in Section 2025.010, in a foreign nation. Except as modified in this
34 section, the procedures for taking oral depositions in California set forth in Article
35 9 apply to an oral deposition taken in a foreign nation.

36 (b) If a deponent is a party to the action or an officer, director, managing agent,
37 or employee of a party, the service of the deposition notice is effective to compel
38 the deponent to attend and to testify, as well as to produce any document or
39 tangible thing for inspection and copying.

40 (c) If a deponent is not a party to the action or an officer, director, managing
41 agent or employee of a party, a party serving a deposition notice under this section
42 shall use any process and procedures required and available under the laws of the
43 foreign nation where the deposition is to be taken to compel the deponent to attend

1 and to testify, as well as to produce any document or tangible thing for inspection,
2 copying, and any related activity.

3 (d) A deposition taken under this section shall be conducted under the
4 supervision of any of the following:

5 (1) A person who is authorized to administer oaths or their equivalent by the
6 laws of the United States or of the foreign nation, and who is not otherwise
7 disqualified under Section 2025.160 and subdivisions (b) and (c) of Section
8 2025.180.

9 (2) A person or officer appointed by commission or under letters rogatory.

10 (3) Any person agreed to by all the parties.

11 (e) On motion of the party seeking to take an oral deposition in a foreign nation,
12 the court in which the action is pending shall issue a commission, letters rogatory,
13 or a letter of request, if it determines that one is necessary or convenient. The
14 commission, letters rogatory, or letter of request may include any terms and
15 directions that are just and appropriate. The deposition officer may be designated
16 by name or by descriptive title in the deposition notice and in the commission.
17 Letters rogatory or a letter of request may be addressed: “To the Appropriate
18 Judicial Authority in [name of foreign nation].”

19 **Comment.** Subdivision (a) of Section 2026.020 continues former Section 2027(a) without
20 change, except to conform the cross-references.

21 Subdivision (b) continues former Section 2027(b)(1) without change.

22 Subdivision (c) continues former Section 2027(b)(2) without change.

23 Subdivision (d) continues the first paragraph of former Section 2027(c) without substantive
24 change.

25 Subdivision (e) continues the second paragraph of former Section 2027(c) without change.

26 Article 11. Deposition by Written Questions

27 § 2028.010. Deposition by written questions

28 2028. Any party may obtain discovery by taking a deposition by written
29 questions instead of by oral examination. Except as modified in this article, the
30 procedures for taking oral depositions set forth in Articles 9 and 10 apply to
31 written depositions.

32 **Comment.** Section 2028.010 continues former Section 2028(a) without substantive change.

33 § 2028.020. Notice of written deposition

34 2028.020. The notice of a written deposition shall comply with Sections
35 2025.030 and 2025.040, except as follows:

36 (a) The name or descriptive title, as well as the address, of the deposition officer
37 shall be stated.

38 (b) The date, time, and place for commencement of the deposition may be left to
39 future determination by the deposition officer.

40 **Comment.** Section 2028.020 continues former Section 2028(b) without substantive change.

1 **§ 2028.030. Direct, cross, redirect, and recross questions**

2 2028.030. (a) The questions to be propounded to the deponent by direct
3 examination shall accompany the notice of a written deposition.

4 (b) Within 30 days after the deposition notice and questions are served, a party
5 shall serve any cross questions on all other parties entitled to notice of the
6 deposition.

7 (c) Within 15 days after being served with cross questions, a party shall serve
8 any redirect questions on all other parties entitled to notice of the deposition.

9 (d) Within 15 days after being served with redirect questions, a party shall serve
10 any recross questions on all other parties entitled to notice of the deposition.

11 (e) The court may, for good cause shown, extend or shorten the time periods for
12 the interchange of cross, redirect, and recross questions.

13 **Comment.** Subdivision (a) of Section 2028.030 continues the first paragraph of former Section
14 2028(c) without change.

15 Subdivision (b) continues the second paragraph of former Section 2028(c) without change.

16 Subdivision (c) continues the third paragraph of former Section 2028(c) without change.

17 Subdivision (d) continues the fourth paragraph of former Section 2028(c) without change.

18 Subdivision (e) continues the fifth paragraph of former Section 2028(c) without change.

19 **§ 2028.040. Objections**

20 2028.040. (a) A party who objects to the form of any question shall serve a
21 specific objection to that question on all parties entitled to notice of the deposition
22 within 15 days after service of the question. A party who fails to timely serve an
23 objection to the form of a question waives it.

24 (b) The objecting party shall promptly move the court to sustain the objection.
25 This motion shall be accompanied by a declaration under Section 2023.060.
26 Unless the court has sustained that objection, the deposition officer shall propound
27 to the deponent that question subject to that objection as to its form.

28 (c) Except as provided in Section 2023.040, the court shall impose a monetary
29 sanction under Article 7 against any party, person, or attorney who unsuccessfully
30 makes or opposes a motion to sustain an objection.

31 **Comment.** Subdivision (a) of Section 2028.040 continues the first and second sentences of
32 former Section 2028(d)(1) without change.

33 Subdivision (b) continues the third, fourth, and fifth sentences of former Section 2028(d)(1)
34 without substantive change.

35 Subdivision (c) continues the second paragraph of former Section 2028(d)(1) without
36 substantive change.

37 **§ 2028.050. Objection based on privilege**

38 2028.050. (a) A party who objects to any question on the ground that it calls for
39 information that is privileged or is protected work product under Article 4 shall
40 serve a specific objection to that question on all parties entitled to notice of the
41 deposition within 15 days after service of the question. A party who fails to timely
42 serve that objection waives it.

1 (b) The party propounding any question to which an objection is made on those
2 grounds may then move the court for an order overruling that objection. This
3 motion shall be accompanied by a declaration under Section 2023.060. The
4 deposition officer shall not propound to the deponent any question to which a
5 written objection on those grounds has been served unless the court has overruled
6 that objection.

7 (c) Except as provided in Section 2023.040, the court shall impose a monetary
8 sanction under Article 7 against any party, person, or attorney who unsuccessfully
9 makes or opposes a motion to overrule an objection.

10 **Comment.** Subdivision (a) of Section 2028.050 continues the first and second sentences of
11 former Section 2028(d)(2) without change.

12 Subdivision (b) continues the third, fourth, and fifth sentences of former Section 2028(d)(2)
13 without substantive change.

14 Subdivision (c) continues the second paragraph of former Section 2028(d)(2) without
15 substantive change.

16 **§ 2028.060. Preview of questions**

17 2028.060. (a) The party taking a written deposition may forward to the deponent
18 a copy of the questions on direct examination for study prior to the deposition.

19 (b) No party or attorney shall permit the deponent to preview the form or the
20 substance of any cross, redirect, or recross questions.

21 **Comment.** Subdivision (a) of Section 2028.060 continues the first sentence of former Section
22 2028(e) without change.

23 Subdivision (b) continues the second sentence of former Section 2028(e) without change.

24 **§ 2028.070. Court orders**

25 2028.070. In addition to any appropriate order listed in Section 2025.120, the
26 court may order any of the following:

27 (a) That the deponent's testimony be taken by oral, instead of written,
28 examination.

29 (b) That one or more of the parties receiving notice of the written deposition be
30 permitted to attend in person or by attorney and to propound questions to the
31 deponent by oral examination.

32 (c) That objections under Sections 2028.040 and 2028.050 be sustained or
33 overruled.

34 (d) That the deposition be taken before an officer other than the one named or
35 described in the deposition notice.

36 **Comment.** Section 2028.070 continues former Section 2028(f) without change, except to
37 conform the cross-references.

38 **§ 2028.080. Duties of deposition officer**

39 2028.080. The party taking a written deposition shall deliver to the officer
40 designated in the deposition notice a copy of that notice and of all questions served
41 under Section 2028.030. The deposition officer shall proceed promptly to

1 propound the questions and to take and record the testimony of the deponent in
2 response to the questions.

3 **Comment.** Section 2028.080 continues former Section 2028(g) without substantive change.

4 Article 12. Deposition in Action Pending Outside California

5 **§ 2029.010. Deposition in action pending outside California**

6 2029.010. Whenever any mandate, writ, letters rogatory, letter of request, or
7 commission is issued out of any court of record in any other state, territory, or
8 district of the United States, or in a foreign nation, or whenever, on notice or
9 agreement, it is required to take the oral or written deposition of a natural person in
10 California, the deponent may be compelled to appear and testify, and to produce
11 documents and things, in the same manner, and by the same process as may be
12 employed for the purpose of taking testimony in actions pending in California.

13 **Comment.** Section 2029.010 continues former Section 2029 without change.

14  **Staff Note.** The staff is not certain that this provision should be located here, in a separate
15 article. We would solicit comment on possible alternatives.

16 Article 13. Written Interrogatories

17 **§ 2030.010. Written interrogatories to parties**

18 2030.010. (a) Any party may obtain discovery within the scope delimited by
19 Articles 2 and 3, and subject to the restrictions set forth in Article 5, by
20 propounding to any other party to the action written interrogatories to be answered
21 under oath.

22 (b) An interrogatory may relate to whether another party is making a certain
23 contention, or to the facts, witnesses, and writings on which a contention is based.
24 An interrogatory is not objectionable because an answer to it involves an opinion
25 or contention that relates to fact or the application of law to fact, or would be
26 based on information obtained or legal theories developed in anticipation of
27 litigation or in preparation for trial.

28 **Comment.** Subdivision (a) of Section 2030.010 continues former Section 2030(a) without
29 change, except to conform the cross-references.

30 Subdivision (b) continues former Section 2030(c)(6) without change.

31 **§ 2030.020. Time of propounding interrogatories**

32 2030.020. (a) A defendant may propound interrogatories to a party to the action
33 without leave of court at any time.

34 (b) A plaintiff may propound interrogatories to a party without leave of court at
35 any time that is 10 days after the service of the summons on, or in unlawful
36 detainer actions five days after service of the summons on or appearance by, that
37 party, whichever occurs first.

1 (c) Notwithstanding subdivision (b), on motion with or without notice, the court,
2 for good cause shown, may grant leave to a plaintiff to propound interrogatories at
3 an earlier time.

4 **Comment.** Subdivision (a) of Section 2030.020 continues the first sentence of former Section
5 2030(b) without change.

6 Subdivision (b) continues the second sentence of former Section 2030(b) without change.

7 Subdivision (c) continues the third sentence of former Section 2030(b) without substantive
8 change.

9 **§ 2030.030. Number of interrogatories**

10 2030.030. (a) A party may propound to another party either or both of the
11 following:

12 (1) 35 specially prepared interrogatories that are relevant to the subject matter of
13 the pending action.

14 (2) Any additional number of official form interrogatories, as described in
15 Article 17, that are relevant to the subject matter of the pending action.

16 (b) Except as provided in Section 2030.070, no party shall, as a matter of right,
17 propound to any other party more than 35 specially prepared interrogatories. If the
18 initial set of interrogatories does not exhaust this limit, the balance may be
19 propounded in subsequent sets.

20 (c) Unless a declaration as described in Section 2030.050 has been made, a party
21 need only respond to the first 35 specially prepared interrogatories served, if that
22 party states an objection to the balance, under Section 2030.130, on the ground
23 that the limit has been exceeded.

24 **Comment.** Subdivision (a) of Section 2030.030 continues the first sentence of former Section
25 2030(c)(1) without substantive change.

26 Subdivision (b) continues the second and third sentences of former Section 2030(c)(2) without
27 change, except to conform the cross-reference.

28 Subdivision (c) continues the fourth sentence of former Section 2030(c)(2) without change,
29 except to conform the cross-references.

30 **§ 2030.040. Extra interrogatories**

31 2030.040. (a) Subject to the right of the responding party to seek a protective
32 order under Section 2030.090, any party who attaches a supporting declaration as
33 described in Section 2030.050 may propound a greater number of specially
34 prepared interrogatories to another party if this greater number is warranted
35 because of any of the following:

36 (1) The complexity or the quantity of the existing and potential issues in the
37 particular case.

38 (2) The financial burden on a party entailed in conducting the discovery by oral
39 deposition.

40 (3) The expedience of using this method of discovery to provide to the
41 responding party the opportunity to conduct an inquiry, investigation, or search of
42 files or records to supply the information sought.

1 (b) If the responding party seeks a protective order on the ground that the
2 number of specially prepared interrogatories is unwarranted, the propounding
3 party shall have the burden of justifying the number of these interrogatories.

4 **Comment.** Subdivision (a) of Section 2030.040 continues the first sentence of former Section
5 2030(c)(2) without change, except to conform the cross-references.

6 Subdivision (b) continues the second sentence of former Section 2030(c)(2) without change.

7 **§ 2030.050. Declaration in support of extra interrogatories**

8 2030.050. Any party who is propounding or has propounded more than 35
9 specially prepared interrogatories to any other party shall attach to each set of
10 those interrogatories a declaration containing substantially the following:

11 **DECLARATION FOR ADDITIONAL DISCOVERY**

12 I, _____, declare:

13 1. I am (a party to this action or proceeding appearing in propria persona)
14 (presently the attorney for _____, a party to this action or proceeding).

15 2. I am propounding to _____ the attached set of interrogatories.

16 3. This set of interrogatories will cause the total number of specially prepared
17 interrogatories propounded to the party to whom they are directed to exceed the
18 number of specially prepared interrogatories permitted by Section 2030.30 of the
19 Code of Civil Procedure.

20 4. I have previously propounded a total of _____ interrogatories to this
21 party, of which _____ interrogatories were not official form interrogatories.

22 5. This set of interrogatories contains a total of _____ specially prepared
23 interrogatories.

24 6. I am familiar with the issues and the previous discovery conducted by all of
25 the parties in the case.

26 7. I have personally examined each of the questions in this set of interrogatories.

27 8. This number of questions is warranted under Section 2030.040 of the Code of
28 Civil Procedure because _____. (Here state each factor described in Section
29 2030.040 that is relied on, as well as the reasons why any factor relied on is
30 applicable to the instant lawsuit.)

31 9. None of the questions in this set of interrogatories is being propounded for
32 any improper purpose, such as to harass the party, or the attorney for the party, to
33 whom it is directed, or to cause unnecessary delay or needless increase in the cost
34 of litigation.

35 I declare under penalty of perjury under the laws of California that the foregoing
36 is true and correct, and that this declaration was executed on _____.

37 _____
38 (Signature)

39 Attorney for _____

1 **Comment.** Section 2030.050 continues former Section 2030(c)(3) without change, except to
2 conform the cross-references.

3 **§ 2030.060. Form and contents of interrogatories**

4 2030.060. (a) A party propounding interrogatories shall number each set of
5 interrogatories consecutively.

6 (b) In the first paragraph immediately below the title of the case, there shall
7 appear the identity of the propounding party, the set number, and the identity of
8 the responding party.

9 (c) Each interrogatory in a set shall be separately set forth and identified by
10 number or letter.

11 (d) Each interrogatory shall be full and complete in and of itself. No preface or
12 instruction shall be included with a set of interrogatories unless it has been
13 approved under Article 17.

14 (e) Any term specially defined in a set of interrogatories shall be typed with all
15 letters capitalized wherever that term appears.

16 (f) No specially prepared interrogatory shall contain subparts, or a compound,
17 conjunctive, or disjunctive question.

18 (g) An interrogatory may not be made a continuing one so as to impose on the
19 party responding to it a duty to supplement an answer to it that was initially correct
20 and complete with later acquired information.

21 **Comment.** Subdivision (a) of Section 2030.060 continues the first sentence of former Section
22 2030(c)(4) without change.

23 Subdivision (b) continues the second sentence of former Section 2030(c)(4) without change.

24 Subdivision (c) continues the third sentence of former Section 2030(c)(4) without change.

25 Subdivision (d) continues the first and second sentences of former Section 2030(c)(5) without
26 change, except to conform the cross-reference.

27 Subdivision (e) continues the third sentence of former Section 2030(c)(5) without change.

28 Subdivision (f) continues the fourth sentence of former Section 2030(c)(5) without change.

29 Subdivision (g) continues former Section 2030(c)(7) without change.

30 **§ 2030.070. Supplemental interrogatories**

31 2030.070. (a) In addition to the number of interrogatories permitted by Sections
32 2030.030 and 2030.040, a party may propound a supplemental interrogatory to
33 elicit any later acquired information bearing on all answers previously made by
34 any party in response to interrogatories.

35 (b) A party may propound a supplemental interrogatory twice before the initial
36 setting of a trial date, and, subject to the time limits on discovery proceedings and
37 motions provided in Article 8, once after the initial setting of a trial date.

38 (c) Notwithstanding subdivision (b), on motion, for good cause shown, the court
39 may grant leave to a party to propound an additional number of supplemental
40 interrogatories.

41 **Comment.** Subdivisions (a) and (b) of Section 2030.070 continue the first sentence of former
42 Section 2030(c)(8) without substantive change.

1 Subdivision (c) continues the second sentence of former Section 2030(c)(8) without substantive
2 change.

3 **§ 2030.080. Service of interrogatories**

4 2030.080. (a) The party propounding interrogatories shall serve a copy of them
5 on the party to whom the interrogatories are directed.

6 (b) The propounding party shall also serve a copy of the interrogatories on all
7 other parties who have appeared in the action. On motion, with or without notice,
8 the court may relieve the party from this requirement on its determination that
9 service on all other parties would be unduly expensive or burdensome.

10 **Comment.** Subdivision (a) of Section 2030.080 continues the first clause of former Section
11 2030(d) without substantive change.

12 Subdivision (b) continues the second clause of former Section 2030(d) without substantive
13 change.

14 **§ 2030.090. Motion for protective order**

15 2030.090. (a) When interrogatories have been propounded, the responding party,
16 and any other party or affected natural person or organization may promptly move
17 for a protective order. This motion shall be accompanied by a declaration under
18 Section 2023.060.

19 (b) The court, for good cause shown, may make any order that justice requires to
20 protect any party or other natural person or organization from unwarranted
21 annoyance, embarrassment, or oppression, or undue burden and expense. This
22 protective order may include, but is not limited to, one or more of the following
23 directions:

24 (1) That the set of interrogatories, or particular interrogatories in the set, need
25 not be answered.

26 (2) That, contrary to the representations made in a declaration submitted under
27 Section 2030.050, the number of specially prepared interrogatories is unwarranted.

28 (3) That the time specified in Section 2030.150 to respond to the set of
29 interrogatories, or to particular interrogatories in the set, be extended.

30 (4) That the response be made only on specified terms and conditions.

31 (5) That the method of discovery be an oral deposition instead of interrogatories
32 to a party.

33 (6) That a trade secret or other confidential research, development, or
34 commercial information not be disclosed or be disclosed only in a certain way.

35 (7) That some or all of the answers to interrogatories be sealed and thereafter
36 opened only on order of the court.

37 (c) If the motion for a protective order is denied in whole or in part, the court
38 may order that the party provide or permit the discovery against which protection
39 was sought on terms and conditions that are just.

40 (d) Except as provided in Section 2023.040, the court shall impose a monetary
41 sanction under Article 7 against any party, person, or attorney who unsuccessfully
42 makes or opposes a motion for a protective order.

1 **Comment.** Subdivision (a) of Section 2030.090 continues the first paragraph former Section
2 2030(e) without substantive change.

3 Subdivision (b) continues the second paragraph of former Section 2030(e) (including
4 subparagraphs (e)(1)-(e)(7)) without change, except to conform the cross-references.

5 Subdivision (c) continues the third paragraph of former Section 2030(e) without change.

6 Subdivision (d) continues the fourth paragraph of former Section 2030(e) without substantive
7 change.

8 **§ 2030.100. Form of response to interrogatories**

9 2030.100. (a) The party to whom interrogatories have been propounded shall
10 respond in writing under oath separately to each interrogatory by any of the
11 following:

12 (1) An answer containing the information sought to be discovered.

13 (2) An exercise of the party's option to produce writings.

14 (3) An objection to the particular interrogatory.

15 (b) In the first paragraph of the response immediately below the title of the case,
16 there shall appear the identity of the responding party, the set number, and the
17 identity of the propounding party.

18 (c) Each answer, exercise of option, or objection in the response shall bear the
19 same identifying number or letter and be in the same sequence as the
20 corresponding interrogatory, but the text of that interrogatory need not be repeated.

21 **Comment.** Subdivision (a) of Section 2030.100 continues the first sentence of the first
22 paragraph of former Section 2030(f) without substantive change.

23 Subdivision (b) continues the second sentence of the first paragraph of former Section 2030(f)
24 without change.

25 Subdivision (c) continues the third sentence of the first paragraph of former Section 2030(f)
26 without change.

27 **§ 2030.110. Completeness of response**

28 2030.110. (a) Each answer in a response to interrogatories shall be as complete
29 and straightforward as the information reasonably available to the responding
30 party permits.

31 (b) If an interrogatory cannot be answered completely, it shall be answered to the
32 extent possible.

33 (c) If the responding party does not have personal knowledge sufficient to
34 respond fully to an interrogatory, that party shall so state, but shall make a
35 reasonable and good faith effort to obtain the information by inquiry to other
36 natural persons or organizations, except where the information is equally available
37 to the propounding party.

38 **Comment.** Subdivision (a) of Section 2030.110 continues the first sentence of former Section
39 2030(f) without substantive change.

40 Subdivision (b) continues the second sentence of former Section 2030(f)(1) without change.

41 Subdivision (c) continues the third sentence of former Section 2030(f)(1) without change.

1 **§ 2030.120. Answer necessitating preparation of compilation, abstract, audit, or summary**

2 2030.120. If the answer to an interrogatory would necessitate the preparation or
3 the making of a compilation, abstract, audit, or summary of or from the documents
4 of the party to whom the interrogatory is directed, and if the burden or expense of
5 preparing or making it would be substantially the same for the party propounding
6 the interrogatory as for the responding party, it is a sufficient answer to that
7 interrogatory to refer to this section and to specify the writings from which the
8 answer may be derived or ascertained. This specification shall be in sufficient
9 detail to permit the propounding party to locate and to identify, as readily as the
10 responding party can, the documents from which the answer may be ascertained.
11 The responding party shall then afford to the propounding party a reasonable
12 opportunity to examine, audit, or inspect these documents and to make copies,
13 compilations, abstracts, or summaries of them.

14 **Comment.** Section 2030.120 continues former Section 2030(f)(2) without substantive change.

15 **§ 2030.130. Objection to interrogatory**

16 2030.130. (a) If only a part of an interrogatory is objectionable, the remainder of
17 the interrogatory shall be answered.

18 (b) If an objection is made to an interrogatory or to a part of an interrogatory, the
19 specific ground for the objection shall be set forth clearly in the response. If an
20 objection is based on a claim of privilege, the particular privilege invoked shall be
21 clearly stated. If an objection is based on a claim that the information sought is
22 protected work product under Article 4, that claim shall be expressly asserted.

23 **Comment.** Subdivision (a) of Section 2030.130 continues the first sentence of former Section
24 2030(f)(3) without change.

25 Subdivision (b) continues the second, third, and fourth sentences of former Section 2030(f)(3)
26 without change, except to conform the cross-reference.

27 **§ 2030.140. Signing of response to interrogatories**

28 2030.140. (a) The party to whom the interrogatories are directed shall sign the
29 response under oath unless the response contains only objections.

30 (b) If that party is a public or private corporation, or a partnership, association,
31 or governmental agency, one of its officers or agents shall sign the response under
32 oath on behalf of that party. If the officer or agent signing the response on behalf
33 of that party is an attorney acting in that capacity for the party, that party waives
34 any lawyer-client privilege and any protection for work product under Article 4
35 during any subsequent discovery from that attorney concerning the identity of the
36 sources of the information contained in the response.

37 (c) The attorney for the responding party shall sign any responses that contain an
38 objection.

39 **Comment.** Subdivision (a) of Section 2030.140 continues the first sentence of former Section
40 2030(g) without change.

41 Subdivision (b) continues the second and third sentences of former Section 2030(g) without
42 change, except to conform the cross-reference.

1 Subdivision (c) continues the fourth sentence of former Section 2030(g) without change.

2 **§ 2030.150. Service of response to interrogatories**

3 2030.150. (a) Within 30 days after service of interrogatories, the party to whom
4 the interrogatories are propounded shall serve the original of the response to them
5 on the propounding party. On motion of the propounding party, the court may
6 shorten the time for response. On motion of the responding party, the court may
7 extend the time for response.

8 (b) Notwithstanding subdivision (a), in unlawful detainer actions the party to
9 whom the interrogatories are propounded shall have five days from the date of
10 service to respond. On motion of the propounding party, the court may shorten the
11 time for response.

12 (c) The party to whom the interrogatories are propounded shall also serve a copy
13 of the response on all other parties who have appeared in the action. On motion,
14 with or without notice, the court may relieve the party from this requirement on its
15 determination that service on all other parties would be unduly expensive or
16 burdensome.

17 **Comment.** Subdivisions (a) and (b) of Section 2030.150 continue the first and second
18 sentences of former Section 2030(h) without substantive change.

19 Subdivision (c) continues the third sentence of former Section 2030(h) without substantive
20 change.

21 **§ 2030.160. Agreement to extend time for service of response**

22 2030.160. (a) The party propounding interrogatories and the responding party
23 may agree to extend the time for service of a response to a set of interrogatories, or
24 to particular interrogatories in a set, to a date beyond that provided in Section
25 2030.150.

26 (b) This agreement may be informal, but it shall be confirmed in a writing that
27 specifies the extended date for service of a response.

28 (c) Unless this agreement expressly states otherwise, it is effective to preserve to
29 the responding party the right to respond to any interrogatory to which the
30 agreement applies in any manner specified in Sections 2030.100, 2030.110,
31 2030.120, and 2030.130.

32 **Comment.** Subdivision (a) of Section 2030.160 continues the first sentence of former Section
33 2030(i) without change, except to conform the cross-reference.

34 Subdivision (b) continues the second sentence of former Section 2030(i) without change.

35 Subdivision (c) continues the third sentence of former Section 2030(i) without change, except
36 to conform the cross-reference.

37 **§ 2030.170. Retention of original interrogatories and original response**

38 2030.170. (a) The interrogatories and the response thereto shall not be filed with
39 the court.

40 (b) The propounding party shall retain both the original of the interrogatories,
41 with the original proof of service affixed to them, and the original of the sworn

1 response until six months after final disposition of the action. At that time, both
2 originals may be destroyed, unless the court on motion of any party and for good
3 cause shown orders that the originals be preserved for a longer period.

4 **Comment.** Subdivision (a) of Section 2030.170 continues the first sentence of former Section
5 2030(j) without change.

6 Subdivision (b) continues the second and third sentences of former Section 2030(j) without
7 change.

8 **§ 2030.180. Failure to serve timely response**

9 2030.180. If a party to whom interrogatories are directed fails to serve a timely
10 response, the following rules apply:

11 (a) The party to whom the interrogatories are directed party waives any right to
12 exercise the option to produce writings under Section 2030.120, as well as any
13 objection to the interrogatories, including one based on privilege or on the
14 protection for work product under Article 4. The court, on motion, may relieve that
15 party from this waiver on its determination that both of the following conditions
16 are satisfied:

17 (1) The party has subsequently served a response that is in substantial
18 compliance with Section 2030.120.

19 (2) The party's failure to serve a timely response was the result of mistake,
20 inadvertence, or excusable neglect.

21 (b) The party propounding the interrogatories may move for an order compelling
22 response to the interrogatories.

23 (c) Except as provided in Section 2023.040, the court shall impose a monetary
24 sanction under Article 7 against any party, person, or attorney who unsuccessfully
25 makes or opposes a motion to compel a response to interrogatories. If a party then
26 fails to obey an order compelling answers, the court may make those orders that
27 are just, including the imposition of an issue sanction, an evidence sanction, or a
28 terminating sanction under Article 7. In lieu of or in addition to that sanction, the
29 court may impose a monetary sanction under Article 7.

30 **Comment.** Subdivision (a) of Section 2030.180 continues the first paragraph of former Section
31 2030(k) without substantive change.

32 Subdivision (b) continues the first sentence of the second paragraph of former Section 2030(k)
33 without change.

34 Subdivision (c) continues the second, third, and fourth sentences of former Section 2030(k)
35 without substantive change.

36 **§ 2030.190. Motion to compel further response**

37 2030.190. (a) On receipt of a response to interrogatories, the propounding party
38 may move for an order compelling a further response if the propounding party
39 deems that any of the following apply:

40 (1) An answer to a particular interrogatory is evasive or incomplete.

41 (2) An exercise of the option to produce documents under Section 2030.120 is
42 unwarranted or the required specification of those documents is inadequate.

1 (3) An objection to an interrogatory is without merit or too general.

2 (b) A motion under subdivision (a) shall be accompanied by a declaration under
3 Section 2030.060.

4 (c) Unless notice of this motion is given within 45 days of the service of the
5 response, or any supplemental response, or on or before any specific later date to
6 which the propounding party and the responding party have agreed in writing, the
7 propounding party waives any right to compel a further response to the
8 interrogatories.

9 (d) Except as provided in Section 2023.040, the court shall impose a monetary
10 sanction under Article 7 against any party, person, or attorney who unsuccessfully
11 makes or opposes a motion to compel a further response to interrogatories.

12 (e) If a party then fails to obey an order compelling further response to
13 interrogatories, the court may make those orders that are just, including the
14 imposition of an issue sanction, an evidence sanction, or a terminating sanction
15 under Article 7. In lieu of or in addition to that sanction, the court may impose a
16 monetary sanction under Article 7.

17 **Comment.** Subdivision (a) of Section 2030.190 continues the first sentence of the first
18 paragraph of former Section 2030(l) without substantive change.

19 Subdivision (b) continues the second sentence of the first paragraph of former Section 2030(l)
20 without substantive change.

21 Subdivision (c) continues the second paragraph of former Section 2030(l) without change.

22 Subdivision (d) continues the third paragraph of former Section 2030(l) without substantive
23 change.

24 Subdivision (e) continues the fourth paragraph of former Section 2030(l) without change,
25 except to conform the cross-references.

26 **§ 2030.200. Amended answer to interrogatory**

27 2030.200. (a) Without leave of court, a party may serve an amended answer to
28 any interrogatory that contains information subsequently discovered, inadvertently
29 omitted, or mistakenly stated in the initial interrogatory. At the trial of the action,
30 the propounding party or any other party may use the initial answer under Section
31 2030.210, and the responding party may then use the amended answer.

32 (b) The party who propounded an interrogatory to which an amended answer has
33 been served may move for an order that the initial answer to that interrogatory be
34 deemed binding on the responding party for the purpose of the pending action.
35 This motion shall be accompanied by a declaration under Section 2023.060.

36 (c) The court shall grant a motion under subdivision (b) if it determines that all
37 of the following conditions are satisfied:

38 (1) The initial failure of the responding party to answer the interrogatory
39 correctly has substantially prejudiced the party who propounded the interrogatory.

40 (2) The responding party has failed to show substantial justification for the initial
41 answer to that interrogatory.

1 (3) The prejudice to the propounding party cannot be cured either by a
2 continuance to permit further discovery or by the use of the initial answer under
3 Section 2030.210.

4 (d) Except as provided in Section 2030.040, the court shall impose a monetary
5 sanction under Article 7 against any party, person, or attorney who unsuccessfully
6 makes or opposes a motion to deem binding an initial answer to an interrogatory.

7 **Comment.** Subdivision (a) of Section 2030.200 continues the first paragraph of former Section
8 2030(m) without change, except to conform the cross-reference.

9 Subdivision (b) continues the first and second sentences of the second paragraph of former
10 Section 2030(m) without substantive change.

11 Subdivision (c) continues the third sentence of the second paragraph of former Section 2030(m)
12 without substantive change.

13 Subdivision (d) continues the third paragraph of former Section 2030(m) without substantive
14 change.

15 **§ 2030.210. Use of interrogatory answer at trial**

16 2030.210. At the trial or any other hearing in the action, so far as admissible
17 under the rules of evidence, the propounding party or any party other than the
18 responding party may use any answer or part of an answer to an interrogatory only
19 against the responding party. It is not ground for objection to the use of an answer
20 to an interrogatory that the responding party is available to testify, has testified, or
21 will testify at the trial or other hearing.

22 **Comment.** Section 2030.210 continues former Section 2030(n) without change.

23 **Article 14. Inspection and Production of Documents, Tangible**
24 **Things, Land, and Other Property**

25 **§ 2031.010. Inspection and production of documents, tangible things, land, and other**
26 **property**

27 2031.010. (a) Any party may obtain discovery within the scope delimited by
28 Articles 2 and 3, and subject to the restrictions set forth in Article 5, by inspecting
29 documents, tangible things, and land or other property that are in the possession,
30 custody, or control of any other party to the action.

31 (b) A party may demand that any other party produce and permit the party
32 making the demand, or someone acting on that party's behalf, to inspect and to
33 copy a document that is in the possession, custody, or control of the party on
34 whom the demand is made.

35 (c) A party may demand that any other party produce and permit the party
36 making the demand, or someone acting on that party's behalf, to inspect and to
37 photograph, test, or sample any tangible things that are in the possession, custody,
38 or control of the party on whom the demand is made.

39 (d) A party may demand that any other party allow the party making the
40 demand, or someone acting on that party's behalf, to enter on any land or other
41 property that is in the possession, custody, or control of the party on whom the

1 demand is made, and to inspect and to measure, survey, photograph, test, or
2 sample the land or other property, or any designated object or operation on it.

3 **Comment.** Subdivision (a) of Section 2031.010 continues the first paragraph of former Section
4 2031(a) without change, except to conform the cross-references.

5 Subdivision (b) continues former Section 2031(a)(1) without change.

6 Subdivision (c) continues former Section 2031(a)(2) without change.

7 Subdivision (d) continues former Section 2031(a)(3) without change.

8 **§ 2031.020. Time of making inspection demand**

9 2031.020. (a) A defendant may make a demand for inspection without leave of
10 court at any time.

11 (b) A plaintiff may make a demand for inspection without leave of court at any
12 time that is 10 days after the service of the summons on, or in unlawful detainer
13 actions within five days after service of the summons on or appearance by, the
14 party to whom the demand is directed, whichever occurs first.

15 (c) Notwithstanding subdivision (b), on motion with or without notice, the court,
16 for good cause shown, may grant leave to a plaintiff to make an inspection demand
17 at an earlier time.

18 **Comment.** Subdivision (a) of Section 2031.020 continues the first sentence of former Section
19 2031(b) without change.

20 Subdivision (b) of Section 2031.020 continues the second sentence of former Section 2031(b)
21 without change.

22 Subdivision (c) continues the third sentence of former Section 2031(b) without substantive
23 change.

24 **§ 2031.030. Form of inspection demand**

25 2031.030. (a) A party demanding an inspection shall number each set of
26 demands consecutively.

27 (b) In the first paragraph immediately below the title of the case, there shall
28 appear the identity of the demanding party, the set number, and the identity of the
29 responding party.

30 (c) Each demand in a set shall be separately set forth, identified by number or
31 letter, and shall do all of the following:

32 (1) Designate the documents, tangible things, or land or other property to be
33 inspected either by specifically describing each individual item or by reasonably
34 particularizing each category of item.

35 (2) Specify a reasonable time for the inspection that is at least 30 days after
36 service of the demand, or in unlawful detainer actions at least five days after
37 service of the demand, unless the court for good cause shown has granted leave to
38 specify an earlier date.

39 (3) Specify a reasonable place for making the inspection, copying, and
40 performing any related activity.

41 (4) Specify any related activity that is being demanded in addition to an
42 inspection and copying, as well as the manner in which that related activity will be

1 performed, and whether that activity will permanently alter or destroy the item
2 involved.

3 **Comment.** Subdivision (a) of Section 2031.030 continues the first sentence of former Section
4 2031(c) without change.

5 Subdivision (b) continues the second sentence of former Section 2031(c) without change.

6 Subdivision (c) continues the third sentence of former Section 2031(c) (including
7 subparagraphs (c)(1)-(c)(4)) without change.

8 **§ 2031.040. Service of inspection demand**

9 2031.040. The party demanding an inspection shall serve a copy of the
10 inspection demand on the party to whom it is directed and on all other parties who
11 have appeared in the action.

12 **Comment.** Section 2031.040 continues former Section 2031(d) without change.

13 **§ 2031.050. Supplemental inspection demand**

14 2031.050. (a) In addition to the inspection demands permitted by Section
15 2031.010, a party may propound a supplemental demand to inspect any later
16 acquired or discovered documents, tangible things, or land or other property that
17 are in the possession, custody, or control of the party on whom the demand is
18 made.

19 (b) A party may propound a supplemental inspection demand twice prior to the
20 initial setting of a trial date, and, subject to the time limits on discovery
21 proceedings and motions provided in Article 8, once after the initial setting of a
22 trial date.

23 (c) Notwithstanding subdivision (b), on motion, for good cause shown, the court
24 may grant leave to a party to propound an additional number of supplemental
25 demands for inspection.

26 **Comment.** Subdivisions (a) and (b) of Section 2031.050 continue the first sentence of former
27 Section 2031(e) without substantive change.

28 Subdivision (c) continues the second sentence of former Section 2031(e) without substantive
29 change.

30 **§ 2031.060. Motion for protective order**

31 2031.060. (a) When an inspection of documents, tangible things or places has
32 been demanded, the party to whom the demand has been directed, and any other
33 party or affected person or organization, may promptly move for a protective
34 order. This motion shall be accompanied by a declaration under Section 2031.060.

35 (b) The court, for good cause shown, may make any order that justice requires to
36 protect any party or other natural person or organization from unwarranted
37 annoyance, embarrassment, or oppression, or undue burden and expense. This
38 protective order may include, but is not limited to, one or more of the following
39 directions:

40 (1) That all or some of the items or categories of items in the inspection demand
41 need not be produced or made available at all.

1 (2) That the time specified in Section 2031.120 to respond to the set of
2 inspection demands, or to a particular item or category in the set, be extended.

3 (3) That the place of production be other than that specified in the inspection
4 demand.

5 (4) That the inspection be made only on specified terms and conditions.

6 (5) That a trade secret or other confidential research, development, or
7 commercial information not be disclosed, or be disclosed only to specified persons
8 or only in a specified way.

9 (6) That the items produced be sealed and thereafter opened only on order of the
10 court.

11 (c) If the motion for a protective order is denied in whole or in part, the court
12 may order that the party to whom the demand was directed provide or permit the
13 discovery against which protection was sought on terms and conditions that are
14 just.

15 (d) Except as provided in Section 2023.040, the court shall impose a monetary
16 sanction under Article 7 against any party, person, or attorney who unsuccessfully
17 makes or opposes a motion for a protective order.

18 **Comment.** Subdivision (a) of Section 2031.060 continues the first paragraph of former Section
19 2031(f) without substantive change.

20 Subdivision (b) continues the second paragraph of former Section 2031(f) (including
21 subparagraphs (f)(1)-(f)(6)) without change, except to conform the cross-reference.

22 Subdivision (c) continues the third paragraph of former Section 2031(f) without change.

23 Subdivision (d) continues the fourth paragraph of former Section 2031(f) without substantive
24 change.

25 **§ 2031.070. Response to inspection demand**

26 2031.070. (a) The party to whom an inspection demand has been directed shall
27 respond separately to each item or category of item by any of the following:

28 (1) A statement that the party will comply with the particular demand for
29 inspection and any related activities.

30 (2) A representation that the party lacks the ability to comply with the demand
31 for inspection of a particular item or category of item.

32 (3) An objection to the particular demand.

33 (b) In the first paragraph of the response immediately below the title of the case,
34 there shall appear the identity of the responding party, the set number, and the
35 identity of the demanding party.

36 (c) Each statement of compliance, each representation, and each objection in the
37 response shall bear the same number and be in the same sequence as the
38 corresponding item or category in the demand, but the text of that item or category
39 need not be repeated.

40 **Comment.** Subdivision (a) of Section 2031.070 continues the first paragraph of former Section
41 2031(g) without substantive change.

42 Subdivision (b) continues the first sentence of the second paragraph of former Section 2031(g)
43 without change.

1 Subdivision (c) continues the second sentence of the second paragraph of former Section
2 2031(g) without change.

3 **§ 2031.080. Statement of compliance with inspection demand**

4 2031.080. A statement that the party to whom an inspection demand has been
5 directed will comply with the particular demand shall state that the production,
6 inspection, and related activity demanded will be allowed either in whole or in
7 part, and that all documents or things in the demanded category that are in the
8 possession, custody, or control of that party and to which no objection is being
9 made will be included in the production.

10 **Comment.** Section 2031.080 continues the first paragraph of former Section 2031(g)(1)
11 without change.

12 **§ 2031.090. Representation of inability to comply with inspection demand**

13 2031.090. A representation of inability to comply with the particular demand for
14 inspection shall affirm that a diligent search and a reasonable inquiry has been
15 made in an effort to comply with that demand. This statement shall also specify
16 whether the inability to comply is because the particular item or category has
17 never existed, has been destroyed, has been lost, misplaced, or stolen, or has never
18 been, or is no longer, in the possession, custody, or control of the responding
19 party. The statement shall set forth the name and address of any natural person or
20 organization known or believed by that party to have possession, custody, or
21 control of that item or category of item.

22 **Comment.** Section 2031.090 continues former Section 2031(g)(2) without change.

23 **§ 2031.100. Objection to inspection demand**

24 2031.100. (a) If only part of an item or category of item in an inspection demand
25 is objectionable, the response shall contain a statement of compliance, or a
26 representation of inability to comply with respect to the remainder of that item or
27 category.

28 (b) If the responding party objects to the demand for inspection of an item or
29 category of item, the response shall do both of the following:

30 (1) Identify with particularity any document, tangible thing, or land falling
31 within any category of item in the demand to which an objection is being made.

32 (2) Set forth clearly the extent of, and the specific ground for, the objection. If an
33 objection is based on a claim of privilege, the particular privilege invoked shall be
34 stated. If an objection is based on a claim that the information sought is protected
35 work product under Article 4, that claim shall be expressly asserted.

36 **Comment.** Subdivision (a) of Section 2031.100 continues the first sentence of former Section
37 2031(g)(3) without change.

38 Subdivision (b) continues the second, third, and fourth sentences of former Section 2031(g)(3)
39 without substantive change.

1 **§ 2031.110. Signing of response to inspection demand**

2 2031.110. (a) The party to whom the demand for inspection is directed shall sign
3 the response under oath unless the response contains only objections.

4 (b) If that party is a public or private corporation or a partnership or association
5 or governmental agency, one of its officers or agents shall sign the response under
6 oath on behalf of that party. If the officer or agent signing the response on behalf
7 of that party is an attorney acting in that capacity for a party, that party waives any
8 lawyer-client privilege and any protection for work product under Article 4 during
9 any subsequent discovery from that attorney concerning the identity of the sources
10 of the information contained in the response.

11 (c) The attorney for the responding party shall sign any responses that contain an
12 objection.

13 **Comment.** Subdivision (a) of Section 2031.110 continues the first sentence of former Section
14 2031(h) without change.

15 Subdivision (b) continues the second and third sentences of former Section 2031(h) without
16 change, except to conform the cross-reference.

17 Subdivision (c) continues the fourth sentence of former Section 2031(h) without change.

18 **§ 2031.120. Service of response to inspection demand**

19 2031.120. (a) Within 30 days after service of an inspection demand, the party to
20 whom the demand is directed shall serve the original of the response to it on the
21 party making the demand, and a copy of the response on all other parties who have
22 appeared in the action. On motion of the party making the demand, the court may
23 shorten the time for response. On motion of the party to whom the demand has
24 been directed, the court may extend the time for response.

25 (b) Notwithstanding subdivision (a), in an unlawful detainer action the party to
26 whom an inspection demand is directed shall serve the response within five days
27 after service of the demand. On motion of the party making the demand, the court
28 may shorten the time for the response.

29 **Comment.** Section 2031.120 continues former Section 2031(i) without substantive change.

30 **§ 2031.130. Agreement to extend time for service of response**

31 2031.130. (a) The party demanding an inspection and the responding party may
32 agree to extend the time for service of a response to a set of inspection demands,
33 or to particular items or categories of items in a set, to a date beyond that provided
34 in Section 2031.120.

35 (b) This agreement may be informal, but it shall be confirmed in a writing that
36 specifies the extended date for service of a response.

37 (c) Unless this agreement expressly states otherwise, it is effective to preserve to
38 the responding party the right to respond to any item or category of item in the
39 demand to which the agreement applies in any manner specified in Sections
40 2031.070, 2031.080, 2031.090, and 2031.100.

41 **Comment.** Subdivision (a) of Section 2031.130 continues the first sentence of former Section
42 2031(j) without change, except to conform the cross-reference.

1 Subdivision (b) continues the second sentence of former Section 2031(j) without change.
2 Subdivision (c) continues the third sentence of former Section 2031(j) without change, except
3 to conform the cross-reference.

4 **§ 2031.140. Manner of production**

5 2031.140. (a) Any documents produced in response to an inspection demand
6 shall either be produced as they are kept in the usual course of business, or be
7 organized and labeled to correspond with the categories in the demand.

8 (b) If necessary, the responding party at the reasonable expense of the
9 demanding party shall, through detection devices, translate any data compilations
10 included in the demand into reasonably usable form.

11 **Comment.** Subdivision (a) of Section 2031.140 continues the first sentence of the second
12 paragraph of former Section 2031(g)(1) without substantive change.

13 Subdivision (b) continues the second sentence of the second paragraph of former Section
14 2031(g)(1) without change.

15 **§ 2031.150. Retention of original inspection demand and original response**

16 2031.150. (a) The inspection demand and the response to it shall not be filed
17 with the court.

18 (b) The party demanding an inspection shall retain both the original of the
19 inspection demand, with the original proof of service affixed to it, and the original
20 of the sworn response until six months after final disposition of the action. At that
21 time, both originals may be destroyed, unless the court, on motion of any party and
22 for good cause shown, orders that the originals be preserved for a longer period.

23 **Comment.** Subdivision (a) of Section 2031.150 continues the first sentence of former Section
24 2031(k) without change.

25 Subdivision (b) continues the second and third sentences of former Section 2031(k) without
26 change.

27 **§ 2031.150. Failure to serve timely response**

28 2031.150. If a party to whom an inspection demand is directed fails to serve a
29 timely response to it, the following rules apply:

30 (a) The party to whom the inspection demand is directed waives any objection to
31 the demand, including one based on privilege or on the protection for work
32 product under Article 4. The court, on motion, may relieve that party from this
33 waiver on its determination that both of the following conditions are satisfied:

34 (1) The party has subsequently served a response that is in substantial
35 compliance with Sections 2031.070, 2031.080, 2031.090, and 2031.100.

36 (2) The party's failure to serve a timely response was the result of mistake,
37 inadvertence, or excusable neglect.

38 (b) The party making the demand may move for an order compelling response to
39 the inspection demand.

40 (c) Except as provided in Section 2023.040, the court shall impose a monetary
41 sanction under Article 7 against any party, person, or attorney who unsuccessfully
42 makes or opposes a motion to compel a response to an inspection demand. If a

1 party then fails to obey the order compelling a response, the court may make those
2 orders that are just, including the imposition of an issue sanction, an evidence
3 sanction, or a terminating sanction under Article 7. In lieu of or in addition to that
4 sanction, the court may impose a monetary sanction under Article 7.

5 **Comment.** Subdivision (a) of Section 2031.150 continues the first paragraph of former Section
6 2031(l) without substantive change.

7 Subdivision (b) continues the first sentence of the second paragraph of former Section 2031(l)
8 without change.

9 Subdivision (c) continues the second, third, and fourth sentences of former Section 2030(k)
10 without substantive change.

11 **§ 2031.160. Motion to compel further response to inspection demand**

12 2031.160. (a) On receipt of a response to an inspection demand, the party
13 demanding an inspection may move for an order compelling further response to
14 the demand if the demanding party deems that any of the following apply:

15 (1) A statement of compliance with the demand is incomplete.

16 (2) A representation of inability to comply is inadequate, incomplete, or evasive.

17 (3) An objection in the response is without merit or too general.

18 (b) A motion under subdivision (a) shall comply with both of the following:

19 (1) The motion shall set forth specific facts showing good cause justifying the
20 discovery sought by the inspection demand.

21 (2) The motion shall be accompanied by a declaration under Section 2023.060.

22 (c) Unless notice of this motion is given within 45 days of the service of the
23 response, or any supplemental response, or on or before any specific later date to
24 which the demanding party and the responding party have agreed in writing, the
25 demanding party waives any right to compel a further response to the inspection
26 demand.

27 (d) Except as provided in Section 2023.040, the court shall impose a monetary
28 sanction under Article 7 against any party, person, or attorney who unsuccessfully
29 makes or opposes a motion to compel further response to an inspection demand.

30 (e) If a party fails to obey an order compelling further response, the court may
31 make those orders that are just, including the imposition of an issue sanction, an
32 evidence sanction, or a terminating sanction under Article 7. In lieu of or in
33 addition to that sanction, the court may impose a monetary sanction under Article
34 7.

35 **Comment.** Subdivision (a) of Section 2031.160 continues the first sentence of the first
36 paragraph of former Section 2031(m) without substantive change.

37 Subdivision (b) continues the second sentence of the first paragraph of former Section 2031(m)
38 without substantive change.

39 Subdivision (c) continues the second paragraph of former Section 2031(m) without change.

40 Subdivision (d) continues the third paragraph of former Section 2031(m) without substantive
41 change.

42 Subdivision (e) continues the fourth paragraph of former Section 2031(m) without change,
43 except to conform the cross-references.

1 **§ 2031.170. Motion to compel compliance with inspection demand**

2 2031.170. (a) If a party filing a response to a demand for inspection under
3 Section 2030.070 thereafter fails to permit the inspection in accordance with that
4 party’s statement of compliance, the party demanding the inspection may move for
5 an order compelling compliance.

6 (b) Except as provided in Section 2023.040, the court shall impose a monetary
7 sanction under Article 7 against any party, person, or attorney who unsuccessfully
8 makes or opposes a motion to compel compliance with an inspection demand.

9 (c) If a party then fails to obey an order compelling inspection, the court may
10 make those orders that are just, including the imposition of an issue sanction, an
11 evidence sanction, or a terminating sanction under Article 7. In lieu of or in
12 addition to that sanction, the court may impose a monetary sanction under Article
13 7.

14 **Comment.** Subdivision (a) of Section 2031.170 continues the first paragraph of former Section
15 2031(n) without change, except to conform the cross-reference.

16 Subdivision (b) continues the second paragraph of former Section 2031(n) without substantive
17 change.

18 Subdivision (c) continues the third paragraph of former Section 2031(n) without change, except
19 to conform the cross-references.

20 **§ 2031.500. Disclosure of written evidence relating to land boundary or validity of state**
21 **patent or grant**

22 2031.500. (a) In any action, regardless of who is the moving party, where the
23 boundary of land patented or otherwise granted by the state is in dispute, or the
24 validity of any state patent or grant dated prior to 1950 is in dispute, all parties
25 shall have the duty to disclose to all opposing parties all nonprivileged relevant
26 written evidence then known and available, including evidence against interest,
27 relating to the above issues.

28 (b) This evidence shall be disclosed within 120 days after the filing with the
29 court of proof of service upon all named defendants. Thereafter, the parties shall
30 have the continuing duty to make all subsequently discovered relevant and
31 nonprivileged written evidence available to the opposing parties.

32 **Comment.** Subdivision (a) of Section 2031.500 continues the first sentence of former Section
33 2031.5 without substantive change.

34 Subdivision (b) continues the second and third sentences of former Section 2031.5 without
35 change.

36 Article 15. Physical or Mental Examination

37 **§ 2032.010. “Plaintiff” and “defendant” defined**

38 2032.010. As used in Sections 2030.040, 2030.050, 2030.060, 2030.070, and
39 2030.080, “plaintiff” includes a cross-complainant, and “defendant” includes a
40 cross-defendant.

41 **Comment.** Section 2032.010 continues former Section 2032(c)(1) without substantive change.

1 **§ 2032.020. Effect of article**

2 2032.020. (a) Nothing in this article affects tests under the Uniform Act on
3 Blood Tests to Determine Paternity (Chapter 2 (commencing with Section 7550)
4 of Part 2 of Division 12 of the Family Code).

5 (b) Nothing in this article requires the disclosure of the identity of an expert
6 consulted by an attorney in order to make the certification required in an action for
7 professional negligence under Sections 411.30 and 411.35.

8 **Comment.** Subdivision (a) of Section 2032.020 continues the third sentence of former Section
9 2032(b) without substantive change.

10 Subdivision (b) continues former Section 2032(k) without substantive change.

11 **§ 2032.030. Physical or mental examination**

12 2032.030. (a) Any party may obtain discovery, subject to the restrictions set
13 forth in Article 5, by means of a physical or mental examination of any of the
14 following:

15 (1) A party to the action.

16 (2) An agent of any party.

17 (3) A natural person in the custody or under the legal control of a party, in any
18 action in which the mental or physical condition (including the blood group) of
19 that party or other person is in controversy in the action.

20 (b) A physical examination conducted under this article shall be performed only
21 by a licensed physician or other appropriate licensed health care practitioner.

22 (c) A mental examination conducted under this article shall be performed only
23 by a licensed physician, or by a licensed clinical psychologist who holds a doctoral
24 degree in psychology and has had at least five years of postgraduate experience in
25 the diagnosis of emotional and mental disorders.

26 **Comment.** Subdivision (a) of Section 2032.030 continues former Section 2032(a) without
27 substantive change.

28 Subdivision (b) continues the first sentence of former Section 2032(b) without substantive
29 change.

30 Subdivision (c) continues the second sentence of former Section 2032(b) without substantive
31 change.

32 **§ 2032.040. Demand for physical examination of personal injury plaintiff**

33 2032.040. (a) In any case in which a plaintiff is seeking recovery for personal
34 injuries, any defendant may demand one physical examination of the plaintiff, if
35 both of the following conditions are satisfied:

36 (1) The examination does not include any diagnostic test or procedure that is
37 painful, protracted, or intrusive.

38 (2) The examination is conducted at a location within 75 miles of the residence
39 of the examinee.

40 (b) A defendant may make a demand under subdivision (a) without leave of
41 court after that defendant has been served or has appeared in the action, whichever
42 occurs first.

1 (c) A demand under subdivision (a) shall specify the time, place, manner,
2 conditions, scope, and nature of the examination, as well as the identity and the
3 specialty, if any, of the physician who will perform the examination.

4 (d) A physical examination demanded under subdivision (a) shall be scheduled
5 for a date that is at least 30 days after service of the demand. On motion of the
6 party demanding the examination, the court may shorten this time.

7 (e) The defendant shall serve a copy of the demand under subdivision (a) on the
8 plaintiff and on all other parties who have appeared in the action.

9 **Comment.** Subdivision (a) of Section 2032.040 continues the first sentence of former Section
10 2032(c)(2) without substantive change.

11 Subdivision (b) continues the second sentence of former Section 2032(c)(2) without substantive
12 change.

13 Subdivision (c) continues the third sentence of former Section 2032(c)(2) without substantive
14 change.

15 Subdivision (d) continues former Section 2032(c)(3) without substantive change.

16 Subdivision (e) continues former Section 2032(c)(4) without substantive change.

17 **§ 2032.050. Response to demand for physical examination of personal injury plaintiff**

18 2032.050. (a) The plaintiff to whom a demand for a physical examination under
19 Section 2032.040 is directed shall respond to the demand by a written statement
20 that the examinee will comply with the demand as stated, will comply with the
21 demand as specifically modified by the plaintiff, or will refuse, for reasons
22 specified in the response, to submit to the demanded physical examination.

23 (b) Within 20 days after service of the demand the plaintiff to whom the demand
24 is directed shall serve the original of the response to it on the defendant making the
25 demand, and a copy of the response on all other parties who have appeared in the
26 action. On motion of the defendant making the demand, the court may shorten the
27 time for response. On motion of the plaintiff to whom the demand has been
28 directed, the court may extend the time for response.

29 **Comment.** Subdivision (a) of Section 2032.050 continues the first sentence of former Section
30 2032(c)(5) without substantive change.

31 Subdivision (b) continues the second sentence of former Section 2032(c)(5) without substantive
32 change.

33 **§ 2032.060. Failure to respond to demand for physical examination of personal injury**
34 **plaintiff**

35 2032.060. (a) If a plaintiff to whom a demand for a physical examination under
36 Section 2032.040 is directed fails to serve a timely response to it, that plaintiff
37 waives any objection to the demand. The court, on motion, may relieve that
38 plaintiff from this waiver on its determination that both of the following conditions
39 are satisfied:

40 (1) The plaintiff has subsequently served a response that is in substantial
41 compliance with Section 2032.050.

42 (2) The plaintiff's failure to serve a timely response was the result of mistake,
43 inadvertence, or excusable neglect.

1 (b) The defendant may move for an order compelling response and compliance
2 with a demand for a physical examination.

3 (c) Except as provided in Section 2023.040, the court shall impose a monetary
4 sanction under Article 7 against any party, person, or attorney who unsuccessfully
5 makes or opposes a motion to compel response and compliance with a demand for
6 a physical examination.

7 (d) If a plaintiff then fails to obey the order compelling response and
8 compliance, the court may make those orders that are just, including the
9 imposition of an issue sanction, an evidence sanction, or a terminating sanction
10 under Article 7. In lieu of or in addition to that sanction the court may impose a
11 monetary sanction under Article 7.

12 **Comment.** Subdivision (a) of Section 2032.060 continues the first paragraph of former Section
13 2032(c)(6) without substantive change.

14 Subdivision (b) continues the first sentence of the second paragraph of former Section
15 2032(c)(6) without change.

16 Subdivision (c) continues the second sentence of the second paragraph of former Section
17 2032(c)(6) without substantive change.

18 Subdivision (d) continues the third paragraph of former Section 2032(c)(6) without change,
19 except to conform the cross-references.

20 **§ 2032.070. Motion to compel compliance with demand for physical examination after**
21 **receiving response of personal injury plaintiff**

22 2032.070. (a) If a defendant who has demanded a physical examination under
23 Section 2032.040, on receipt of the plaintiff's response to that demand, deems that
24 any modification of the demand, or any refusal to submit to the physical
25 examination is unwarranted, that defendant may move for an order compelling
26 compliance with the demand. This motion shall be accompanied by a declaration
27 under Section 2023.060.

28 (b) Except as provided in Section 2023.040, the court shall impose a monetary
29 sanction under Article 7 against any party, person, or attorney who unsuccessfully
30 makes or opposes a motion to compel compliance with a demand for a physical
31 examination.

32 **Comment.** Subdivision (a) of Section 2032.070 continues the first paragraph of former Section
33 2032(c)(7) without substantive change.

34 Subdivision (b) continues the second paragraph of former Section 2032(c)(7) without
35 substantive change.

36 **§ 2032.080. Retention of original demand for physical examination and original response**

37 2032.080. (a) The demand for a physical examination under Section 2032.040
38 and the response to it shall not be filed with the court.

39 (b) The defendant shall retain both the original of the demand, with the original
40 proof of service affixed to it, and the original response until six months after final
41 disposition of the action. At that time, the original may be destroyed, unless the
42 court, on motion of any party and for good cause shown, orders that the originals
43 be preserved for a longer period.

1 **Comment.** Subdivision (a) of Section 2032.080 continues the first sentence of former Section
2 2032(c)(8) without substantive change.

3 Subdivision (b) continues the second sentence of former Section 2032(c)(8) without change.

4 **§ 2032.090. Motion for physical or mental examination**

5 2032.090. (a) If any party desires to obtain discovery by a physical examination
6 other than that described in Section 2032.040, or by a mental examination, the
7 party shall obtain leave of court.

8 (b) A motion for an examination under subdivision (a) shall specify the time,
9 place, manner, conditions, scope, and nature of the examination, as well as the
10 identity and the specialty, if any, of the person or persons who will perform the
11 examination. The motion shall be accompanied by a declaration under Section
12 2023.060.

13 (c) Notice of the motion shall be served on the person to be examined and on all
14 parties who have appeared in the action.

15 **Comment.** Subdivision (a) of Section 2032.090 continues the first sentence of the first
16 paragraph of former Section 2032(d) without change, except to conform the cross-reference.

17 Subdivision (b) continues the second and third sentences of former Section 2032(d) without
18 substantive change.

19 Subdivision (c) continues the fourth sentence of former Section 2032(d) without change.

20 **§ 2032.100. Order on motion for physical or mental examination**

21 2032.100. (a) The court shall grant a motion for a physical or mental
22 examination under Section 2032.090 only for good cause shown.

23 (b) If a party stipulates as provided in subdivision (c), the court shall not order a
24 mental examination of a person for whose personal injuries a recovery is being
25 sought except on a showing of exceptional circumstances.

26 (c) A stipulation by a party under this subdivision shall include both of the
27 following:

28 (1) A stipulation that no claim is being made for mental and emotional distress
29 over and above that usually associated with the physical injuries claimed.

30 (2) A stipulation that no expert testimony regarding this usual mental and
31 emotional distress will be presented at trial in support of the claim for damages,

32 (d) An order granting a physical or mental examination shall specify the person
33 or persons who may perform the examination, as well as the time, place, manner,
34 diagnostic tests and procedures, conditions, scope, and nature of the examination.

35 (e) If the place of the examination is more than 75 miles from the residence of
36 the person to be examined, an order to submit to it shall be entered only if both of
37 the following conditions are satisfied:

38 (1) The court determines that there is good cause for the travel involved.

39 (2) The order is conditioned on the advancement by the moving party of the
40 reasonable expenses and costs to the examinee for travel to the place of
41 examination.

1 **Comment.** Subdivision (a) of Section 2032.100 continues the first sentence of the second
2 paragraph of former Section 2032(d) without substantive change.

3 Subdivisions (b) and (c) continue the second sentence of the second paragraph of former
4 Section 2032(d) without substantive change.

5 Subdivision (d) continues the third sentence of the second paragraph of former Section 2032(d)
6 without substantive change.

7 Subdivision (e) continues the fourth sentence of the second paragraph of former Section
8 2032(d) without substantive change.

9 **§ 2032.110. Alternative procedures and restrictions**

10 2032.110. In lieu of the procedures and restrictions specified in Sections
11 2032.040 to 2032.100, inclusive, any physical or mental examination may be
12 arranged by, and carried out under, a written agreement of the parties.

13 **Comment.** Section 2032.110 continues former Section 2032(e) without change, except to
14 conform the cross-references.

15 ☞ **Staff Note.** Section 2032(e) (proposed Section 2032.110) appears unnecessary in light of
16 Section 2021 (proposed Section 2016.030), which permits parties to modify discovery procedures
17 by stipulation unless the court orders otherwise. We would solicit comment on whether Section
18 2032.110 should be deleted as redundant.

19 **§ 2032.120. Failure to submit to physical or mental examination**

20 2032.120. If a party is to submit to a physical or mental examination under
21 Sections 2032.040 to 2032.110, inclusive, but fails to do so, the court, on motion
22 of the party entitled to the examination, may make those orders that are just,
23 including the imposition of an issue sanction, an evidence sanction, or a
24 terminating sanction under Article 7. In lieu of or in addition to that sanction, the
25 court may, on motion of the party, impose a monetary sanction under Article 7.

26 **Comment.** Section 2032.120 continues the first paragraph of former Section 2032(f) without
27 substantive change.

28 **§ 2032.130. Failure to produce another for physical and mental examination**

29 2032.130. If a party is required to produce another for a physical or mental
30 examination under Sections 2032.040 to 2032.110, inclusive, but fails to do so, the
31 court, on motion of the party entitled to the examination, may make those orders
32 that are just, including the imposition of an issue sanction, an evidence sanction, or
33 a terminating sanction under Article 7, unless the party failing to comply
34 demonstrates an inability to produce that person for examination. In lieu of or in
35 addition to that sanction, the court may impose a monetary sanction under Article
36 7.

37 **Comment.** Section 2032.120 continues the second paragraph of former Section 2032(f) without
38 substantive change.

39 **§ 2032.140. Observation of examination by attorney or representative**

40 2032.140. (a) The attorney for the examinee or for a party producing the
41 examinee, or that attorney's representative, shall be permitted to attend and

1 observe any physical examination conducted for discovery purposes, and to record
2 stenographically or by audiotape any words spoken to or by the examinee during
3 any phase of the examination.

4 (b) The observer under subdivision (a) may monitor the examination, but shall
5 not participate in or disrupt it.

6 (c) If an attorney's representative is to serve as the observer, the representative
7 shall be authorized to so act by a writing subscribed by the attorney which
8 identifies the representative.

9 (d) If in the judgment of the observer the examiner becomes abusive to the
10 examinee or undertakes to engage in unauthorized diagnostic tests and procedures,
11 the observer may suspend it to enable the party being examined or producing the
12 examinee to make a motion for a protective order.

13 (e) If the observer begins to participate in or disrupt the examination, the person
14 conducting the physical examination may suspend the examination to enable the
15 party at whose instance it is being conducted to move for a protective order.

16 (f) Except as provided in Section 2023.040, the court shall impose a monetary
17 sanction under Article 7 against any party, person, or attorney who unsuccessfully
18 makes or opposes a motion for a protective order [under this section].

19 **Comment.** Subdivision (a) of Section 2032.140 continues the first sentence of the first
20 paragraph of former Section 2032(g)(1) without change.

21 Subdivision (b) continues the second sentence of the first paragraph of former Section
22 2032(g)(1) without substantive change.

23 Subdivision (c) continues the third sentence of the first paragraph of former Section 2032(g)(1)
24 without change.

25 Subdivision (d) continues the first sentence of the first sentence of the second paragraph of
26 former Section 2032(g)(1) without change.

27 Subdivision (e) continues the second sentence of the second paragraph of former Section
28 2032(g)(1) without change.

29 Subdivision (f) continues the third paragraph of former Section 2032(g)(1) without substantive
30 change.

31 ☞ **Staff Note.** The third paragraph of Section 2032(g)(1) states: "The court shall impose a
32 monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully
33 makes or opposes *a motion for a protective order*, unless it finds that the one subject to the
34 sanction acted with substantial justification or that other circumstances make the imposition of the
35 sanction unjust." (Emphasis added.) From this language, it is unclear whether the provision is
36 meant to apply to any motion for a protective order, or only to a motion relating to observation of
37 a physical or mental examination. The staff presumes the latter, because otherwise language in
38 other discovery provisions would be surplusage. We would solicit comment on whether the
39 reference to "protective order" should be changed to "protective order under this section," as
40 shown in brackets in Section 2032.140.

41 § 2032.150. X-rays

42 2032.150. If an examinee submits or authorizes access to X-rays of any area of
43 his or her body for inspection by the examining physician, no additional X-rays of
44 that area may be taken by the examining physician except with consent of the
45 examinee or on order of the court for good cause shown.

1 **Comment.** Section 2032.150 continues the fourth paragraph of former Section 2032(g)(1)
2 without substantive change.

3 **§ 2032.160. Recording of mental examination**

4 2032.160. (a) The examiner and examinee shall have the right to record a mental
5 examination on audiotape.

6 (b) Nothing in this chapter shall be construed to alter, amend, or affect existing
7 case law with respect to the presence of the attorney for the examinee or other
8 persons during the examination by agreement or court order.

9 **Comment.** Subdivision (a) of Section 2032.160 continues the first sentence of former Section
10 2032(g) without substantive change.

11 Subdivision (b) continues the second sentence of former Section 2032(g) without substantive
12 change.

13 **§ 2032.170. Delivery of reports to examinee or party who produced examinee**

14 2032.170. (a) If a party submits to, or produces another for, a physical or mental
15 examination in compliance with a demand under Section 2032.040, an order of
16 court under Section 2032.100, or an agreement under Section 2032.110, that party
17 has the option of making a written demand that the party at whose instance the
18 examination was made deliver both of the following to the demanding party:

19 (1) A copy of a detailed written report setting out the history, examinations,
20 findings, including the results of all tests made, diagnoses, prognoses, and
21 conclusions of the examiner.

22 (2) A copy of reports of all earlier examinations of the same condition of the
23 examinee made by that or any other examiner.

24 (b) If the option under subdivision (a) is exercised, a copy of the requested
25 reports shall be delivered within 30 days after service of the demand, or within 15
26 days of trial, whichever is earlier.

27 (c) In the circumstances described in subdivision (a), the protection for work
28 product under Article 4 is waived, both for the examiner's writings and reports and
29 to the taking of the examiner's testimony.

30 **Comment.** Subdivision (a) of Section 2032.170 continues the first sentence of the first
31 paragraph of former Section 2032(h) without substantive change.

32 Subdivision (b) continues the second sentence of the first paragraph of former Section 2032(h)
33 without substantive change.

34 Subdivision (c) continues the third sentence of the first paragraph of former Section 2032(h)
35 without substantive change.

36 **§ 2032.180. Failure to deliver report to examinee or party who produced examinee**

37 2032.180. (a) If the party at whose instance an examination was made fails to
38 make a timely delivery of the reports demanded under Section 2032.170, the
39 demanding party may move for an order compelling their delivery. This motion
40 shall be accompanied by a declaration under Section 2023.060.

41 (b) Except as provided in Section 2023.040, the court shall impose a monetary
42 sanction under Article 7 against any party, person, or attorney who unsuccessfully

1 makes or opposes a motion to compel delivery of medical reports [under this
2 section].

3 (c) If a party then fails to obey an order compelling delivery of demanded
4 medical reports, the court may make those orders that are just, including the
5 imposition of an issue sanction, an evidence sanction, or a terminating sanction
6 under Article 7. In lieu of or in addition to those sanctions, the court may impose a
7 monetary sanction under Article 7. The court shall exclude at trial the testimony of
8 any examiner whose report has not been provided by a party.

9 **Comment.** Subdivision (a) of Section 2032.180 continues the second paragraph of former
10 Section 2032(h) without substantive change.

11 Subdivision (b) continues the third paragraph of former Section 2032(h) without substantive
12 change.

13 Subdivision (c) continues the fourth paragraph of former Section 2032(h) without change,
14 except to conform the cross-references.

15 ☞ **Staff Note.** The third paragraph of Section 2032(h) states: “The court shall impose a monetary
16 sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or
17 opposes *a motion to compel delivery of medical reports*, unless it finds that the one subject to the
18 sanction acted with substantial justification or that other circumstances make the imposition of the
19 sanction unjust.” (Emphasis added.) From this language, it is unclear whether the provision is
20 meant to apply to any motion to compel delivery of medical reports, or only to a motion
21 stemming from the requirements of the first paragraph of Section 2032(h) (proposed Section
22 2032.170). The staff presumes the latter, because otherwise language in Section 2032(j) would be
23 surplusage. We would solicit comment on whether the reference to “motion to compel delivery of
24 medical reports” should be changed to “motion to compel delivery of medical reports under this
25 section,” as shown in brackets in Section 2032.180.

26 § 2032.190. Waiver

27 2032.190. By demanding and obtaining a report of a physical or mental
28 examination under Section 2032.180, or by taking the deposition of the examiner,
29 other than under Sections 2034.110 to 2034.170, inclusive, the party who
30 submitted to, or produced another for, a physical or mental examination waives in
31 the pending action, and in any other action involving the same controversy, any
32 privilege, as well as any protection for work product under Article 4, that the party
33 or other examinee may have regarding reports and writings as well as the
34 testimony of every other physician, psychologist, or licensed health care
35 practitioner who has examined or may thereafter examine the party or other
36 examinee in respect of the same physical or mental condition.

37 **Comment.** Section 2032.190 continues former Section 2302(i) without change, except to
38 conform the cross-references.

39 § 2032.200. Exchange of other reports

40 2032.200. A party receiving a demand for a report under Section 2032.170 is
41 entitled at the time of compliance to receive in exchange a copy of any existing
42 written report of any examination of the same condition by any other physician,
43 psychologist, or licensed health care practitioner. In addition, that party is entitled
44 to receive promptly any later report of any previous or subsequent examination of

1 the same condition, by any physician, psychologist, or licensed health care
2 practitioner.

3 **Comment.** Section 2032.200 continues the first paragraph of former Section 2032(j) without
4 change, except to conform the cross-reference.

5 **§ 2032.210. Failure to exchange other reports**

6 2032.210. (a) If a party who has demanded and received delivery of medical
7 reports under Section 2032.170 fails to deliver existing or later reports of previous
8 or subsequent examinations under Section 2032.200, a party who has complied
9 with Section 2032.170 may move for an order compelling delivery of medical
10 reports. This motion shall be accompanied by a declaration under Section
11 2023.060.

12 (b) Except as provided in Section 2023.040, the court shall impose a monetary
13 sanction under Article 7 against any party, person, or attorney who unsuccessfully
14 makes or opposes a motion to compel delivery of medical reports [under this
15 section].

16 (c) If a party then fails to obey an order compelling delivery of medical reports,
17 the court may make those orders that are just, including the imposition of an issue
18 sanction, an evidence sanction, or a terminating sanction under Article 7. In lieu of
19 or in addition to the sanction, the court may impose a monetary sanction under
20 Article 7. The court shall exclude at trial the testimony of any health care
21 practitioner whose report has not been provided by a party ordered to do so by the
22 court.

23 **Comment.** Subdivision (a) of Section 2032.210 continues the second paragraph of former
24 Section 2032(j) without substantive change.

25 Subdivision (b) continues the third paragraph of former Section 2032(j) without substantive
26 change.

27 Subdivision (c) continues the fourth paragraph of former Section 2032(j) without change,
28 except to conform the cross-references.

29 ☞ **Staff Note.** The third paragraph of Section 2032(j) states: “The court shall impose a monetary
30 sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or
31 opposes *a motion to compel delivery of medical reports*, unless it finds that the one subject to the
32 sanction acted with substantial justification or that other circumstances make the imposition of the
33 sanction unjust.” (Emphasis added.) From this language, it is unclear whether the provision is
34 meant to apply to any motion to compel delivery of medical reports, or only to a motion
35 stemming from the requirements of the first paragraph of Section 2032(j) (proposed Section
36 2032.200). The staff presumes the latter, because otherwise language in Section 2032(h) would be
37 surplusage. We would solicit comment on whether the reference to “motion to compel delivery of
38 medical reports” should be changed to “motion to compel delivery of medical reports under this
39 section,” as shown in brackets in Section 2032.210.

40 **Article 16. Requests for Admission**

41 **§ 2033.010. Requests for admission**

42 2033.010. Any party may obtain discovery within the scope delimited by
43 Articles 2 and 3, and subject to the restrictions set forth in Article 5, by a written

1 request that any other party to the action admit the genuineness of specified
2 documents, or the truth of specified matters of fact, opinion relating to fact, or
3 application of law to fact. A request for admission may relate to a matter that is in
4 controversy between the parties.

5 **Comment.** Section 2033.010 continues former Section 2033(a) without change, except to
6 conform the cross-references.

7 **§ 2033.020. Time of making requests for admission**

8 2033.020. (a) A defendant may make requests for admission by a party without
9 leave of court at any time.

10 (b) A plaintiff may make requests for admission by a party without leave of
11 court at any time that is 10 days after the service of the summons on, or, in
12 unlawful detainer actions, five days after the service of the summons on, or
13 appearance by, that party, whichever occurs first.

14 (c) Notwithstanding subdivision (b), on motion with or without notice, the court,
15 for good cause shown, may grant leave to a plaintiff to make requests for
16 admission at an earlier time.

17 **Comment.** Subdivision (a) of Section 2033.020 continues the first sentence of former Section
18 2033(b) without change.

19 Subdivision (b) continues the second sentence of former Section 2033(b) without change.

20 Subdivision (c) continues the third sentence of former Section 2033(b) without substantive
21 change.

22 **§ 2033.030. Number of requests for admission**

23 2033.030. (a) No party shall request, as a matter of right, that any other party
24 admit more than 35 matters that do not relate to the genuineness of documents. If
25 the initial set of admission requests does not exhaust this limit, the balance may be
26 requested in subsequent sets.

27 (b) Unless a declaration as described in Section 2033.050 has been made, a party
28 need only respond to the first 35 admission requests served that do not relate to the
29 genuineness of documents, if that party states an objection to the balance under
30 Section 2033.110 on the ground that the limit has been exceeded.

31 (c) The number of requests for admission of the genuineness of documents is not
32 limited except as justice requires to protect the responding party from unwarranted
33 annoyance, embarrassment, oppression, or undue burden and expense.

34 **Comment.** Subdivision (a) of Section 2033.030 continues the first sentence of the first
35 paragraph of former Section 2033(c)(1) without change.

36 Subdivision (b) continues the second sentence of the first paragraph of former Section
37 2033(c)(1) without change, except to conform the cross-references.

38 Subdivision (c) continues the second paragraph of former Section 2033(c)(1) without change.

39 **§ 2033.040. Extra requests for admission**

40 2033.040. (a) Subject to the right of the responding party to seek a protective
41 order under Section 2033.080, any party who attaches a supporting declaration as
42 described in Section 2033.050 may request a greater number of admissions by

1 another party if the greater number is warranted by the complexity or the quantity
2 of the existing and potential issues in the particular case.

3 (b) If the responding party seeks a protective order on the ground that the
4 number of requests for admission is unwarranted, the propounding party shall have
5 the burden of justifying the number of requests for admission.

6 **Comment.** Subdivision (a) of Section 2033.040 continues the first paragraph of former Section
7 2033(c)(2) without change, except to conform the cross-references.

8 Subdivision (b) continues the second paragraph of former Section 2033(c)(2) without change.

9 **§ 2033.050. Declaration in support of extra requests for admission**

10 2033.050. (a) Any party who is requesting or who has already requested more
11 than 35 admissions not relating to the genuineness of documents by any other
12 party shall attach to each set of requests for admissions a declaration containing
13 substantially the following words:

14 **DECLARATION FOR ADDITIONAL DISCOVERY**

15 I, _____, declare:

16 1. I am (a party to this action or proceeding appearing in propria persona)
17 (presently the attorney for _____, a party to this action or proceeding).

18 2. I am propounding to _____ the attached set of requests for admission.

19 3. This set of requests for admission will cause the total number of requests
20 propounded to the party to whom they are directed to exceed the number of
21 requests permitted by Section 2033.030 of the Code of Civil Procedure.

22 4. I have previously propounded a total of _____ requests for admission to
23 this party.

24 5. This set of requests for admission contains a total of _____ requests.

25 6. I am familiar with the issues and the previous discovery conducted by all of
26 the parties in this case.

27 7. I have personally examined each of the requests in this set of requests for
28 admission.

29 8. This number of requests for admission is warranted under Section 2033.040 of
30 the Code of Civil Procedure because _____. (Here state the reasons why the
31 complexity or the quantity of issues in the instant lawsuit warrant this number of
32 requests for admission.)

33 9. None of the requests in this set of requests is being propounded for any
34 improper purpose, such as to harass the party, or the attorney for the party, to
35 whom it is directed, or to cause unnecessary delay or needless increase in the cost
36 of litigation.

37 I declare under penalty of perjury under the laws of California that the foregoing
38 is true and correct, and that this declaration was executed on _____.

39 _____
40 (Signature)

1 Attorney for _____

2 **Comment.** Section 2033.050 continues former Section 2033 (c)(3) without change, except to
3 conform the cross-references.

4 **§ 2033.060. Form of requests for admission**

5 2033.060. (a) A party requesting admissions shall number each set of requests
6 consecutively.

7 (b) In the first paragraph immediately below the title of the case, there shall
8 appear the identity of the party requesting the admissions, the set number, and the
9 identity of the requesting party.

10 (c) Each request for admission in a set shall be separately set forth and identified
11 by letter or number.

12 (d) Each request for admission shall be full and complete in and of itself. No
13 preface or instruction shall be included with a set of admission requests unless it
14 has been approved under Article 17.

15 (e) Any term specially defined in a request for admission shall be typed with all
16 letters capitalized whenever the term appears.

17 (f) No request for admission shall contain subparts, or a compound, conjunctive,
18 or disjunctive request unless it has been approved under Article 17.

19 (g) A party requesting an admission of the genuineness of any documents shall
20 attach copies of those documents to the requests, and shall make the original of
21 those documents available for inspection on demand by the party to whom the
22 requests for admission are directed.

23 (h) No party shall combine in a single document requests for admission with any
24 other method of discovery.

25 **Comment.** Subdivision (a) of Section 2033.060 continues the first sentence of former Section
26 2033(c)(4) without change.

27 Subdivision (b) continues the second sentence of former Section 2033(c)(4) without substantive
28 change.

29 Subdivision (c) continues the third sentence of former Section 2033(c)(4) without change.

30 Subdivision (d) continues the first sentence of former Section 2033(c)(5) without change,
31 except to conform the cross-reference.

32 Subdivision (e) continues the second sentence of former Section 2033(c)(5) without change.

33 Subdivision (f) continues the third sentence of former Section 2033(c)(5) without change,
34 except to conform the cross-reference.

35 Subdivision (g) continues former Section 2033(c)(6) without change.

36 Subdivision (h) continues former Section 2033(c)(7) without change.

37 **§ 2033.070. Service of requests for admission**

38 2033.070. The party requesting admissions shall serve a copy of them on the
39 party to whom they are directed and on all other parties who have appeared in the
40 action.

41 **Comment.** Section 2033.070 continues former Section 2033(d) without change.

1 **§ 2033.080. Motion for protective order**

2 2033.080. (a) When requests for admission have been made, the responding
3 party may promptly move for a protective order. This motion shall be
4 accompanied by a declaration under Section 2033.060.

5 (b) The court, for good cause shown, may make any order that justice requires to
6 protect any party from unwarranted annoyance, embarrassment, oppression, or
7 undue burden and expense. This protective order may include, but is not limited
8 to, one or more of the following directions:

9 (1) That the set of admission requests, or particular requests in the set, need not
10 be answered at all.

11 (2) That, contrary to the representations made in a declaration submitted under
12 Section 2033.050, the number of admission requests is unwarranted.

13 (3) That the time specified in Section 2033.130 to respond to the set of
14 admission requests, or to particular requests in the set, be extended.

15 (4) That a trade secret or other confidential research, development, or
16 commercial information not be admitted or be admitted only in a certain way.

17 (5) That some or all of the answers to requests for admission be sealed and
18 thereafter opened only on order of the court.

19 (c) If the motion for a protective order is denied in whole or in part, the court
20 may order that the responding party provide or permit the discovery against which
21 protection was sought on terms and conditions that are just.

22 (d) Except as provided in Section 2033.040, the court shall impose a monetary
23 sanction under Article 7 against any party, person, or attorney who unsuccessfully
24 makes or opposes a motion for a protective order [under this section].

25 **Comment.** Subdivision (a) of Section 2033.080 continues the first paragraph of former Section
26 2033(e) without substantive change.

27 Subdivision (b) continues the second paragraph of former Section 2033(e) (including
28 subparagraphs (e)(1)-(e)(5)) without change, except to conform the cross references.

29 Subdivision (c) continues the third paragraph of former Section 2033(e) without change.

30 Subdivision (d) continues the fourth paragraph of former Section 2033(e) without change.

31 ☞ **Staff Note.** The fourth paragraph of Section 2033(e) states: “The court shall impose a
32 monetary sanction under Section 2033 against any party, person, or attorney who unsuccessfully
33 makes or opposes *a motion for a protective order*, unless it finds that the one subject to the
34 sanction acted with substantial justification or that other circumstances make the imposition of the
35 sanction unjust.” (Emphasis added.) From this language, it is unclear whether the provision is
36 meant to apply to any motion for a protective order, or only to a motion relating to requests for
37 admission. The staff presumes the latter, because otherwise language in other discovery
38 provisions would be surplusage. We would solicit comment on whether the reference to
39 “protective order” should be changed to “protective order under this section,” as shown in
40 brackets in Section 2033.080.

41 **§ 2033.090. Response to requests for admission**

42 2033.090. (a) The party to whom requests for admission have been directed shall
43 respond in writing under oath separately to each request.

1 (b) Each response shall answer the substance of the requested admission, or set
2 forth an objection to the particular request.

3 (c) In the first paragraph of the response immediately below the title of the case,
4 there shall appear the identity of the responding party, the set number, and the
5 identity of the requesting party.

6 (d) Each answer or objection in the response shall bear the same identifying
7 number or letter and be in the same sequence as the corresponding request, but the
8 text of the particular request need not be repeated.

9 **Comment.** Subdivision (a) of Section 2033.090 continues the first sentence of the introductory
10 paragraph of former Section 2033(f) without change.

11 Subdivision (b) continues the second sentence of the introductory paragraph of former Section
12 2033(f) without change.

13 Subdivision (c) continues the third sentence of the introductory paragraph of former Section
14 2033(f) without change.

15 Subdivision (d) continues the fourth sentence of the introductory paragraph of former Section
16 2033(f) without change.

17 **§ 2033.100. Answer to request for admission**

18 2033.100. (a) Each answer in a response to requests for admission shall be as
19 complete and straightforward as the information reasonably available to the
20 responding party permits.

21 (b) Each answer shall:

22 (1) Admit so much of the matter involved in the request as is true, either as
23 expressed in the request itself or as reasonably and clearly qualified by the
24 responding party.

25 (2) Deny so much of the matter involved in the request as is untrue.

26 (3) Specify so much of the matter involved in the request as to the truth of which
27 the responding party lacks sufficient information or knowledge.

28 (c) If a responding party gives lack of information or knowledge as a reason for
29 a failure to admit all or part of a request for admission, that party shall state in the
30 answer that a reasonable inquiry concerning the matter in the particular request has
31 been made, and that the information known or readily obtainable is insufficient to
32 enable that party to admit the matter.

33 **Comment.** Subdivision (a) of Section 2033.100 continues the first sentence of former Section
34 2033(f)(1) without substantive change.

35 Subdivision (b) continues the second sentence of former Section 2033(f)(1) without substantive
36 change.

37 Subdivision (c) continues the third sentence of former Section 2033(f)(1) without change.

38 **§ 2033.110. Objection to request for admission**

39 2033.110. (a) If only a part of a request for admission is objectionable, the
40 remainder of the request shall be answered.

41 (b) If an objection is made to a request or to a part of a request, the specific
42 ground for the objection shall be set forth clearly in the response. If an objection is
43 based on a claim of privilege, the particular privilege invoked shall be clearly

1 stated. If an objection is based on a claim that the matter as to which an admission
2 is requested is protected work product under Article 4, that claim shall be
3 expressly asserted.

4 **Comment.** Subdivision (a) of Section 2033.110 continues the first sentence of former Section
5 2033(f)(2) without change.

6 Subdivision (b) continues the second, third, and fourth sentences of former Section 2033(f)(2)
7 without change, except to conform the cross-reference.

8 **§ 2033.120. Signing of response to requests for admission**

9 2033.120. (a) The party to whom the requests for admission are directed shall
10 sign the response under oath, unless the response contains only objections.

11 (b) If that party is a public or private corporation, or a partnership or association
12 or governmental agency, one of its officers or agents shall sign the response under
13 oath on behalf of that party. If the officer or agent signing the response on behalf
14 of that party is an attorney acting in that capacity for the party, that party waives
15 any lawyer-client privilege and any protection for work product under Article 4
16 during any subsequent discovery from that attorney concerning the identity of the
17 sources of the information contained in the response.

18 (c) The attorney for the responding party shall sign any response that contains an
19 objection.

20 **Comment.** Subdivision (a) of Section 2033.120 continues the first sentence of former Section
21 2033(g) without change.

22 Subdivision (b) continues the second and third sentences of former Section 2033(g) without
23 change, except to conform the cross-reference.

24 Subdivision (c) continues the fourth sentence of former Section 2033(g) without change.

25 **§ 2033.130. Service of response to requests for admission**

26 2033.130. (a) Within 30 days after service of requests for admission, the party to
27 whom the requests are directed shall serve the original of the response to them on
28 the requesting party, and a copy of the response on all other parties who have
29 appeared. On motion of the requesting party, the court may shorten the time for
30 response. On motion of the responding party, the court may extend the time for
31 response.

32 (b) Notwithstanding subdivision (a), in unlawful detainer actions the party to
33 whom the request is directed shall have five days from the date of service to
34 respond. On motion of the requesting party, the court may shorten the time for
35 response.

36 **Comment.** Section 2033.130 continues former Section 2033(h) without substantive change.

37 **§ 2033.140. Agreement to extend time for service of response**

38 2033.140. (a) The party requesting admissions and the responding party may
39 agree to extend the time for service of a response to a set of admission requests, or
40 to particular requests in a set, to a date beyond that provided in Section 2033.130.

1 (b) This agreement may be informal, but it shall be confirmed in a writing that
2 specifies the extended date for service of a response.

3 (c) Unless this agreement expressly states otherwise, it is effective to preserve to
4 the responding party the right to respond to any request for admission to which the
5 agreement applies in any manner specified in Sections 2033.090, 2033.100, and
6 2033.110.

7 (d) Notice of this agreement shall be given by the responding party to all other
8 parties who were served with a copy of the request.

9 **Comment.** Subdivision (a) continues the first sentence of former Section 2033(i) without
10 change, except to conform the cross-reference.

11 Subdivision (b) continues the second sentence of former Section 2033(i) without change.

12 Subdivision (c) continues the third sentence of former Section 2033(i) without change, except
13 to conform the cross-reference.

14 Subdivision (d) continues the fourth sentence of former Section 2033(i) without change.

15 **§ 2033.150. Retention of original requests for admission and original response**

16 2033.150. (a) The requests for admission and the response to them shall not be
17 filed with the court.

18 (b) The party requesting admissions shall retain both the original of the requests
19 for admission, with the original proof of service affixed to them, and the original
20 of the sworn response until six months after final disposition of the action. At that
21 time, both originals may be destroyed, unless the court, on motion of any party and
22 for good cause shown, orders that the originals be preserved for a longer period.

23 **Comment.** Subdivision (a) of Section 2033.150 continues the first sentence of former Section
24 2033(j) without change.

25 Subdivision (b) continues the second and third sentences of former Section 2033(j) without
26 change.

27 **§ 2033.160. Failure to serve timely response**

28 2033.160. If a party to whom requests for admission are directed fails to serve a
29 timely response, the following rules apply:

30 (a) The party to whom the requests for admission are directed waives any
31 objection to the requests, including one based on privilege or on the protection for
32 work product under Article 4. The court, on motion, may relieve that party from
33 this waiver on its determination that both of the following conditions are satisfied:

34 (1) The party has subsequently served a response that is in substantial
35 compliance with Sections 2033.090, 2033.100, and 2033.110.

36 (2) The party's failure to serve a timely response was the result of mistake,
37 inadvertence, or excusable neglect.

38 (b) The requesting party may move for an order that the genuineness of any
39 documents and the truth of any matters specified in the requests be deemed
40 admitted, as well as for a monetary sanction under Article 7.

41 (c) The court shall make this order, unless it finds that the party to whom the
42 requests for admission have been directed has served, before the hearing on the

1 motion, a proposed response to the requests for admission that is in substantial
2 compliance with Section 2033.100. It is mandatory that the court impose a
3 monetary sanction under Article 7 on the party or attorney, or both, whose failure
4 to serve a timely response to requests for admission necessitated this motion.

5 **Comment.** Subdivision (a) of Section 2033.160 continues the first paragraph of former Section
6 2033(k) without substantive change.

7 Subdivision (b) continues the first sentence of the second paragraph of former Section 2033(k)
8 without change, except to conform the cross-reference.

9 Subdivision (c) continues the second and third sentences of the second paragraph of former
10 Section 2033(k) without change, except to conform the cross-references.

11 **§ 2033.170. Motion to compel further response**

12 2033.170. (a) On receipt of a response to requests for admissions, the party
13 requesting admissions may move for an order compelling a further response if that
14 party deems that either or both of the following apply:

15 (1) An answer to a particular request is evasive or incomplete.

16 (2) An objection to a particular request is without merit or too general.

17 (b) A motion under subdivision (a) shall be accompanied by a declaration under
18 Section 2023.060.

19 (c) Unless notice of this motion is given within 45 days of the service of the
20 response, or any supplemental response, or any specific later date to which the
21 requesting party and the responding party have agreed in writing, the requesting
22 party waives any right to compel further response to the requests for admission.

23 (d) Except as provided in Section 2023.040, the court shall impose a monetary
24 sanction under Article 7 against any party, person, or attorney who unsuccessfully
25 makes or opposes a motion to compel further response.

26 (e) If a party then fails to obey an order compelling further response to requests
27 for admission, the court may order that the matters involved in the requests be
28 deemed admitted. In lieu of or in addition to this order, the court may impose a
29 monetary sanction under Article 7.

30 **Comment.** Subdivision (a) of Section 2033.170 continues the first sentence of former Section
31 2033(l) without substantive change.

32 Subdivision (b) continues the second sentence of former Section 2033(l) without substantive
33 change.

34 Subdivision (c) continues the second paragraph of former Section 2033(l) without change.

35 Subdivision (d) continues the third paragraph of former Section 2033(l) without substantive
36 change.

37 Subdivision (e) continues the fourth paragraph of former Section 2033(l) without change,
38 except to conform the cross-reference.

39 **§ 2033.180. Withdrawal or amendment of admission**

40 2033.180. (a) A party may withdraw or amend an admission made in response to
41 a request for admission only on leave of court granted after notice to all parties.

42 (b) The court may permit withdrawal or amendment of an admission only if it
43 determines that the admission was the result of mistake, inadvertence, or excusable

1 neglect, and that the party who obtained the admission will not be substantially
2 prejudiced in maintaining that party's action or defense on the merits.

3 (c) The court may impose conditions on the granting of the motion that are just,
4 including, but not limited to, the following:

5 (1) An order that the party who obtained the admission be permitted to pursue
6 additional discovery related to the matter involved in the withdrawn or amended
7 admission.

8 (2) An order that the costs of any additional discovery be borne in whole or in
9 part by the party withdrawing or amending the admission.

10 **Comment.** Subdivision (a) of Section 2033.180 continues the first sentence of former Section
11 2033(m) without change.

12 Subdivision (b) continues the second sentence of former Section 2033(m) without change.

13 Subdivision (c) continues the third sentence of former Section 2033(m) without substantive
14 change.

15 **§ 2033.190. Effect of admission**

16 2033.190. (a) Any matter admitted in response to a request for admission is
17 conclusively established against the party making the admission in the pending
18 action, unless the court has permitted withdrawal or amendment of that admission
19 under Section 2033.180.

20 (b) Notwithstanding subdivision (a), any admission made by a party under this
21 section is binding only on that party and is made for the purpose of the pending
22 action only. It is not an admission by that party for any other purpose, and it shall
23 not be used in any manner against that party in any other proceeding.

24 **Comment.** Subdivision (a) of Section 2033.190 continues the first sentence of former Section
25 2033(n) without change, except to conform the cross-reference.

26 Subdivision (b) continues the second and third sentences of former Section 2033(n) without
27 substantive change.

28 **§ 2033.200. Failure to admit fact proven to be true**

29 2033.200. (a) If a party fails to admit the genuineness of any document or the
30 truth of any matter when requested to do so under this article, and if the party
31 requesting that admission thereafter proves the genuineness of that document or
32 the truth of that matter, the party requesting the admission may move the court for
33 an order requiring the party to whom the request was directed to pay the
34 reasonable expenses incurred in making that proof, including reasonable attorney's
35 fees.

36 (b) The court shall make this order unless it finds that any of the following:

37 (1) An objection to the request was sustained or a response to it was waived
38 under Section 2033.170.

39 (2) The admission sought was of no substantial importance.

40 (3) The party failing to make the admission had reasonable ground to believe
41 that that party would prevail on the matter.

42 (4) There was other good reason for the failure to admit.

1 **Comment.** Subdivision (a) of Section 2033.200 continues the first sentence of former Section
2 2033(o) without substantive change.

3 Subdivision (b) continues the second sentence of former Section 2033(o) without substantive
4 change.

5 Article 17. Form Interrogatories and Requests for Admission

6 **§ 2033.510. Judicial Council to develop form interrogatories and requests for admission**

7 2033.510. The Judicial Council shall develop and approve official form
8 interrogatories and requests for admission of the genuineness of any relevant
9 documents or of the truth of any relevant matters of fact for use in any civil action
10 in a state court based on personal injury, property damage, wrongful death,
11 unlawful detainer, breach of contract, family law, or fraud and for any other civil
12 actions the Judicial Council deems appropriate.

13 **Comment.** Section 2033.510 continues the first sentence of former Section 2033.5(a) without
14 change.

15 **§ 2033.520. Form interrogatories for use by victim who has not received complete payment
16 of restitution order**

17 2033.520. (a) The Judicial Council shall develop and approve official form
18 interrogatories for use by a victim who has not received complete payment of a
19 restitution order made pursuant to Section 1202.4 of the Penal Code.

20 (b) Notwithstanding whether a victim initiates or maintains an action to satisfy
21 the unpaid restitution order, a victim may propound the form interrogatories
22 approved pursuant to this section once each calendar year. The defendant subject
23 to the restitution order shall, in responding to the interrogatories propounded,
24 provide current information regarding the nature, extent, and location of any
25 assets, income, and liabilities in which the defendant claims a present or future
26 interest.

27 **Comment.** Subdivision (a) of Section 2033.520 continues former Section 2033.5(d) without
28 change.

29 Subdivision (b) continues former Section 2033.5(e) without change.

30 **§ 2033.530. Procedures for development of form interrogatories and requests for admission**

31 (a) In developing the form interrogatories and requests for admission required by
32 Sections 2033.510 and 2033.520, the Judicial Council shall consult with a
33 representative advisory committee which shall include, but not be limited to,
34 representatives of all of the following:

- 35 (1) The plaintiff's bar.
- 36 (2) The defense bar.
- 37 (3) The public interest bar.
- 38 (4) Court administrators.
- 39 (5) The public.

1 (b) The form interrogatories and requests for admission shall be drafted in
2 nontechnical language.

3 **Comment.** Subdivision (a) of Section 2033.530 continues the first sentence of former Section
4 2033.5(b) without substantive change.

5 Subdivision (b) continues the first clause of the second sentence of former Section 2033.5(b)
6 without substantive change.

7 **§ 2044.540. Procedures for use of form interrogatories and requests for admission**

8 (a) Use of the form interrogatories and requests for admission approved by the
9 Judicial Council shall be optional.

10 (b) The form interrogatories and requests for admission shall be made available
11 through the office of the clerk of the appropriate trial court.

12 (c) The Judicial Council shall promulgate any necessary rules to govern the use
13 of the form interrogatories and requests for admission.

14 **Comment.** Subdivision (a) of Section 2033.540 continues the second sentence of former
15 Section 2033.5(a) without substantive change.

16 Subdivision (b) continues the second clause of the second sentence of former Section 2033.5(b)
17 without substantive change.

18 Subdivision (c) continues former Section 2033.5(c) without substantive change.

19  **Staff Note.** Section 2033.5(f) states: “This section shall become operative on January 1,
20 2000.” That language appears to be obsolete, so it would not be continued in this draft.

21 **Article 18. Simultaneous Exchange of Expert Witness Information**

22 **§ 2034.010. Application of article**

23 2034.010. This article does not apply to exchanges of lists of experts and
24 valuation data in eminent domain proceedings under Chapter 7 (commencing with
25 Section 1258.010) of Title 7 of Part 3.

26 **Comment.** Section 2034.010 continues the last paragraph of former Section 2304(a) without
27 substantive change.

28 **§ 2034.020. Simultaneous exchange of information concerning expert trial witnesses**

29 2034.020. After the setting of the initial trial date for the action, any party may
30 obtain discovery by demanding that all parties simultaneously exchange
31 information concerning each other’s expert trial witnesses to the following extent:

32 (a) Any party may demand a mutual and simultaneous exchange by all parties of
33 a list containing the name and address of any natural person, including one who is
34 a party, whose oral or deposition testimony in the form of an expert opinion any
35 party expects to offer in evidence at the trial.

36 (b) If any expert designated by a party under subdivision (a) is a party or an
37 employee of a party, or has been retained by a party for the purpose of forming
38 and expressing an opinion in anticipation of the litigation or in preparation for the
39 trial of the action, the designation of that witness shall include or be accompanied
40 by an expert witness declaration under Section 2032.070.

1 (c) Any party may also include a demand for the mutual and simultaneous
2 production for inspection and copying of all discoverable reports and writings, if
3 any, made by any expert described in subdivision (b) in the course of preparing
4 that expert's opinion.

5 **Comment.** Subdivision (a) of Section 2034.020 continues former Section 2034(a)(1) without
6 change.

7 Subdivision (b) continues former Section 2034(a)(2) without change, except to conform the
8 cross-references.

9 Subdivision (c) continues former Section 2034(a)(3) without change, except to conform the
10 cross-reference.

11 **§ 2034.030. Time of demanding exchange of expert witness information**

12 2034.030. Any party may make a demand for an exchange of information
13 concerning expert trial witnesses without leave of court. A party shall make this
14 demand no later than the 10th day after the initial trial date has been set, or 70 days
15 before that trial date, whichever is closer to the trial date.

16 **Comment.** Section 2034.030 continues former Section 2034(b) without change.

17 **§ 2034.040. Form and content of demand for exchange of expert witness information**

18 2034.040. (a) A demand for an exchange of information concerning expert trial
19 witnesses shall be in writing and shall identify, below the title of the case, the
20 party making the demand. The demand shall state that it is being made under this
21 article.

22 (b) The demand shall specify the date for the exchange of lists of expert trial
23 witnesses, expert witness declarations, and any demanded production of writings.
24 The specified date of exchange shall be 50 days before the initial trial date, or 20
25 days after service of the demand, whichever is closer to the trial date, unless the
26 court, on motion and a showing of good cause, orders an earlier or later date of
27 exchange.

28 **Comment.** Subdivision (a) of Section 2034.040 continues the first paragraph of former Section
29 2034(c) without substantive change.

30 Subdivision (b) continues the second paragraph of former Section 2034(c) without change.

31 **§ 2034.050. Service of demand for exchange of expert witness information**

32 2034.050. The party demanding an exchange of information concerning expert
33 trial witnesses shall serve the demand on all parties who have appeared in the
34 action.

35 **Comment.** Section 2034.050 continues former Section 2034(d) without change.

36 **§ 2034.060. Motion for protective order**

37 2034.060. (a) A party who has been served with a demand to exchange
38 information concerning expert trial witnesses may promptly move for a protective
39 order. This motion shall be accompanied by a declaration under Section 2023.060.

1 (b) The court, for good cause shown, may make any order that justice requires to
2 protect any party from unwarranted annoyance, embarrassment, oppression, or
3 undue burden and expense. The protective order may include, but is not limited to,
4 one or more of the following directions:

5 (1) That the demand be quashed because it was not timely served.

6 (2) That the date of exchange be earlier or later than that specified in the
7 demand.

8 (3) That the exchange be made only on specified terms and conditions.

9 (4) That the production and exchange of any reports and writings of experts be
10 made at a different place or at a different time than specified in the demand.

11 (5) That some or all of the parties be divided into sides on the basis of their
12 identity of interest in the issues in the action, and that the designation of any
13 experts as described in subdivision (b) of Section 2034.020 be made by any side so
14 created.

15 (6) That a party or a side reduce the list of employed or retained experts
16 designated by that party or side under subdivision (b) of Section 2034.020.

17 (c) If the motion for a protective order is denied in whole or in part, the court
18 may order that the parties against whom the motion is brought, provide or permit
19 the discovery against which the protection was sought on those terms and
20 conditions that are just.

21 (d) Except as provided in Section 2023.040, the court shall impose a monetary
22 sanction under Article 7 against any party, person, or attorney who unsuccessfully
23 makes or opposes a motion for a protective order.

24 **Comment.** Subdivision (a) of Section 2034.060 continues the first paragraph of former Section
25 2034(e) without substantive change.

26 Subdivision (b) continues the second paragraph of former Section 2034(e) (including
27 subparagraphs (e)(1)-(e)(6)) without change, except to conform the cross-references.

28 Subdivision (c) continues the third paragraph of former Section 2034(e) without change.

29 Subdivision (d) continues the fourth paragraph of former Section 2034(e) without substantive
30 change.

31 **§ 2034.070. Manner of exchanging expert witness information**

32 2034.070. (a) All parties who have appeared in the action shall exchange
33 information concerning expert witnesses in writing on or before the date of
34 exchange specified in the demand. The exchange of information may occur at a
35 meeting of the attorneys for the parties involved or by a mailing on or before the
36 date of exchange.

37 (b) The exchange of expert witness information shall include either of the
38 following:

39 (1) A list setting forth the name and address of any person whose expert opinion
40 that party expects to offer in evidence at the trial.

41 (2) A statement that the party does not presently intend to offer the testimony of
42 any expert witness.

1 (c) If any witness on the list is an expert as described in subdivision (b) of
2 Section 2034.020, the exchange shall also include or be accompanied by an expert
3 witness declaration signed only by the attorney for the party designating the
4 expert, or by that party if that party has no attorney. This declaration shall be under
5 penalty of perjury and shall contain:

6 (1) A brief narrative statement of the qualifications of each expert.

7 (2) A brief narrative statement of the general substance of the testimony that the
8 expert is expected to give.

9 (3) A representation that the expert has agreed to testify at the trial.

10 (4) A representation that the expert will be sufficiently familiar with the pending
11 action to submit to a meaningful oral deposition concerning the specific testimony,
12 including any opinion and its basis, that the expert is expected to give at trial.

13 (5) A statement of the expert's hourly and daily fee for providing deposition
14 testimony and for consulting with the retaining attorney.

15 **Comment.** Subdivision (a) of Section 2034.070 continues the introductory paragraph of former
16 Section 2034(f) without change.

17 Subdivision (b) continues former Section 2034(f)(1) without change.

18 Subdivision (c) continues former Section 2034(f)(2) without change, except to conform the
19 cross-reference.

20 **§ 2034.080. Exchange of reports and writings**

21 2034.080. If a demand for an exchange of information concerning expert trial
22 witnesses includes a demand for production of reports and writings as described in
23 subdivision (c) of Section 2034.020, all parties shall produce and exchange, at the
24 place and on the date specified in the demand, all discoverable reports and
25 writings, if any, made by any designated expert described in subdivision (b) of
26 Section 2034.020.

27 **Comment.** Section 2034.080 continues former Section 2034(g) without change, except to
28 conform the cross-references.

29 **§ 2034.090. Supplemental expert witness list**

30 2034.090. (a) Within 20 days after the exchange described in Section 2034.070,
31 any party who engaged in the exchange may submit a supplemental expert witness
32 list containing the name and address of any experts who will express an opinion on
33 a subject to be covered by an expert designated by an adverse party to the
34 exchange, if the party supplementing an expert witness list has not previously
35 retained an expert to testify on that subject.

36 (b) This supplemental list shall be accompanied by an expert witness declaration
37 under subdivision (c) of Section 2034.070 concerning those additional experts, and
38 by all discoverable reports and writings, if any, made by those additional experts.

39 (c) The party shall also make those experts available immediately for a
40 deposition under Sections 2034.110 to 2034.170, inclusive, which deposition may
41 be taken even though the time limit for discovery under Article 8 has expired.

1 **Comment.** Subdivision (a) of Section 2034.090 continues the first sentence of former Section
2 2034(h) without change, except to conform the cross-reference.

3 Subdivision (b) continues the second sentence of former Section 2034(h) without change,
4 except to conform the cross-reference.

5 Subdivision (c) continues the third sentence of former Section 2034(h) without change, except
6 to conform the cross-references.

7 **§ 2034.100. Retention of original demand for exchange of expert witness information and**
8 **original response**

9 2034.100. (a) A demand for an exchange of information concerning expert trial
10 witnesses, and any expert witness lists and declarations exchanged shall not be
11 filed with the court.

12 (b) The party demanding the exchange shall retain both the original of the
13 demand, with the original proof of service affixed, and the original of all expert
14 witness lists and declarations exchanged in response to the demand until six
15 months after final disposition of the action. At that time, all originals may be
16 destroyed unless the court, on motion of any party and for good cause shown,
17 orders that the originals be preserved for a longer period.

18 (c) Notwithstanding subdivisions (a) and (b), a demand for exchange of
19 information concerning expert trial witnesses, and all expert witness lists and
20 declarations exchanged in response to it, shall be lodged with the court when their
21 contents become relevant to an issue in any pending matter in the action.

22 **Comment.** Subdivision (a) of Section 2034.100 continues the first sentence of former Section
23 2034(n) without substantive change.

24 Subdivision (b) continues the second and third sentences of former Section 2034(n) without
25 change.

26 Subdivision (c) continues the fifth sentence of the first paragraph of former Section 2034(k)
27 without substantive change.

28 **§ 2034.110. Deposition of expert witness**

29 2034.110. On receipt of an expert witness list from a party, any other party may
30 take the deposition of any person on the list. The procedures for taking oral and
31 written depositions set forth in Articles 9, 10, and 11 apply to a deposition of a
32 listed trial expert witness except as provided in Sections 2034.110 to 2034.170,
33 inclusive,

34 **Comment.** Section 2034.110 continues the introductory paragraph of former Section 2034(i)
35 without substantive change.

36 **§ 2034.120. Place of expert witness deposition**

37 2034.120. The deposition of any expert described in subdivision (b) of Section
38 2034.020 shall be taken at a place that is within 75 miles of the courthouse where
39 the action is pending. On motion for a protective order by the party designating an
40 expert witness, and on a showing of exceptional hardship, the court may order that
41 the deposition be taken at a more distant place from the courthouse.

42 **Comment.** Section 2034.120 continues former Section 2034(i)(1) without substantive change.

1 **§ 2034.130. Fee for deposing expert witness**

2 2034.130. (a) Except as provided in subdivision (f), this section applies to an
3 expert witness, other than a party or an employee of a party, who is any of the
4 following:

5 (1) An expert described in subdivision (b) of Section 2034.020 except one who
6 is a party or an employee of a party.

7 (2) A treating physician and surgeon or other treating health care practitioner
8 who is to be asked during the deposition to express opinion testimony, including
9 opinion or factual testimony regarding the past or present diagnosis or prognosis
10 made by the practitioner or the reasons for a particular treatment decision made by
11 the practitioner, but not including testimony requiring only the reading of words
12 and symbols contained in the relevant medical record or, if those words and
13 symbols are not legible to the deponent, the approximation by the deponent of
14 what those words or symbols are.

15 (3) An architect, professional engineer, or licensed land surveyor who was
16 involved with the original project design or survey for which that person is asked
17 to express an opinion within the person's expertise and relevant to the action or
18 proceeding.

19 (b) A party desiring to depose an expert witness described in subdivision (a)
20 shall pay the expert's reasonable and customary hourly or daily fee for any time
21 spent at the deposition from the time noticed in the deposition subpoena, or from
22 the time of the arrival of the expert witness should that time be later than the time
23 noticed in the deposition subpoena, until the time the expert witness is dismissed
24 from the deposition, regardless of whether the expert is actually deposed by any
25 party attending the deposition.

26 (c) If any counsel representing the expert or a nonnoticing party is late to the
27 deposition, the expert's reasonable and customary hourly or daily fee for the time
28 period determined from the time noticed in the deposition subpoena until the
29 counsel's late arrival, shall be paid by that tardy counsel.

30 (d) Notwithstanding subdivision (c), the hourly or daily fee charged to the tardy
31 counsel shall not exceed the fee charged to the party who retained the expert,
32 except where the expert donated services to a charitable or other nonprofit
33 organization.

34 (e) A daily fee shall only be charged for a full day of attendance at a deposition
35 or where the expert was required by the deposing party to be available for a full
36 day and the expert necessarily had to forego all business that the expert would
37 otherwise have conducted that day but for the request that the expert be available
38 all day for the scheduled deposition.

39 (f) In a worker's compensation case arising under Division 4 (commencing with
40 Section 3201) or Division 4.5 (commencing with Section 6100) of the Labor
41 Code, a party desiring to depose any expert on another party's expert witness list
42 shall pay the fee under this section.

1 **Comment.** Subdivisions (a) and (b) of Section 2034.130 continue the first sentence of the first
2 paragraph of former Section 2034(i)(2) without substantive change.

3 Subdivision (c) continues the second sentence of the first paragraph of former Section
4 2034(i)(2) without change

5 Subdivision (d) continues the third sentence of the first paragraph of former Section 2034(i)(2)
6 without substantive change

7 Subdivision (e) continues the fourth sentence of the first paragraph of former Section 2034(i)(2)
8 without substantive change

9 Subdivision (f) continues the fifth sentence of the first paragraph of former Section 2034(i)(2)
10 without change.

11 **§ 2034.140. Other fees associated with deposition of expert witness**

12 2034.140. The party designating an expert is responsible for any fee charged by
13 the expert for preparing for a deposition and for traveling to the place of the
14 deposition, as well as for any travel expenses of the expert.

15 **Comment.** Section 2034.140 continues the fourth sentence of the second paragraph of former
16 Section 2034(i)(2) without substantive change.

17 **§ 2034.150. Process for payment of fee for deposing expert witness**

18 2034.150. (a) The party taking the deposition of an expert witness shall either
19 accompany the service of the deposition notice with a tender of the expert's fee
20 based on the anticipated length of the deposition, or tender that fee at the
21 commencement of the deposition.

22 (b) The expert's fee shall be delivered to the attorney for the party designating
23 the expert.

24 (c) If the deposition of the expert takes longer than anticipated, the party giving
25 notice of the deposition shall pay the balance of the expert's fee within five days
26 of receipt of an itemized statement from the expert.

27 **Comment.** Subdivision (a) of Section 2034.150 continues the first sentence of the second
28 paragraph of former Section 2034(i)(2) without substantive change.

29 Subdivision (b) continues the second sentence of the second paragraph of former Section
30 2034(i)(2) without change.

31 Subdivision (c) continues the third sentence of the second paragraph of former Section
32 2034(i)(2) without change.

33 **§ 2034.160. Production of expert**

34 2034.160. (a) The service of a proper deposition notice accompanied by the
35 tender of the expert witness fee described in Section 2034.130 is effective to
36 require the party employing or retaining the expert to produce the expert for the
37 deposition.

38 (b) If the party noticing the deposition fails to tender the expert's fee under
39 Section 2034.130, the expert shall not be deposed at that time unless the parties
40 stipulate otherwise.

41 **Comment.** Subdivision (a) of Section 2034.160 continues the first sentence of former Section
42 2034(i) without change, except to conform the cross-reference.

43 Subdivision (b) continues the second sentence of former Section 2034(i) without change,
44 except to conform the cross-reference.

1 **§ 2034.170. Motion to set compensation of expert**

2 2034.170. (a) If a party desiring to take the deposition of an expert witness under
3 Section 2034.110 deems that the hourly or daily fee of that expert for providing
4 deposition testimony is unreasonable, that party may move for an order setting the
5 compensation of that expert. Notice of this motion shall also be given to the
6 expert.

7 (b) A motion under subdivision (a) shall be accompanied by a declaration under
8 Section 2023.060. In any attempt at an informal resolution under Section
9 2023.060, either the party or the expert shall provide the other with all of the
10 following:

11 (1) Proof of the ordinary and customary fee actually charged and received by
12 that expert for similar services provided outside the subject litigation.

13 (2) The total number of times the presently demanded fee has ever been charged
14 and received by that expert.

15 (3) The frequency and regularity with which the presently demanded fee has
16 been charged and received by that expert within the two-year period preceding the
17 hearing on the motion.

18 (c) In addition to any other facts or evidence, the expert or the party designating
19 the expert shall provide, and the court's determination as to the reasonableness of
20 the fee shall be based on, proof of the ordinary and customary fee actually charged
21 and received by that expert for similar services provided outside the subject
22 litigation.

23 (d) In an action filed after January 1, 1994, the expert or the party designating
24 the expert shall also provide, and the court's determination as to the
25 reasonableness of the fee shall also be based on, both of the following:

26 (1) The total number of times the presently demanded fee has ever been charged
27 and received by that expert.

28 (2) The frequency and regularity with which the presently demanded fee has
29 been charged and received by that expert within the two-year period preceding the
30 hearing on the motion.

31 (e) The court may also consider the ordinary and customary fees charged by
32 similar experts for similar services within the relevant community and any other
33 factors the court deems necessary or appropriate to make its determination.

34 (f) Upon a determination that the fee demanded by that expert is unreasonable,
35 and based upon the evidence and factors considered, the court shall set the fee of
36 the expert providing testimony.

37 (g) Except as provided in Section 2023.040, the court shall impose a monetary
38 sanction under Article 7 against any party, person, or attorney who unsuccessfully
39 makes or opposes a motion to set the expert witness fee.

40 **Comment.** Subdivision (a) of Section 2034.170 continues the first and third sentences of the
41 first paragraph of former Section 2034(i)(4) without change, except to conform the cross-
42 reference.

43 Subdivision (b) continues the second and fourth sentences of the first paragraph of former
44 Section 2034(i)(4) without substantive change.

1 Subdivisions (c) and (d) continue the first and second sentences of the second paragraph of
2 former Section 2034(i)(4) without substantive change.

3 Subdivision (e) continues the third sentence of the second paragraph of former Section
4 2034(i)(4) without change.

5 Subdivision (f) continues the third paragraph of former Section 2034(i)(4) without change.

6 Subdivision (g) continues the fourth paragraph of former Section 2034(i)(4) without substantive
7 change.

8 **§ 2034.180. Exclusion of expert opinion**

9 2034.180. Except as provided in Sections 2034.190 to 2034.250, inclusive, on
10 objection of any party who has made a complete and timely compliance with
11 Section 2034.070, the trial court shall exclude from evidence the expert opinion of
12 any witness that is offered by any party who has unreasonably failed to do any of
13 the following:

14 (a) List that witness as an expert under Section 2034.070.

15 (b) Submit an expert witness declaration.

16 (c) Produce reports and writings of expert witnesses under Section 2034.080.

17 (d) Make that expert available for a deposition under Sections 2034.110 to
18 2034.170, inclusive.

19 **Comment.** Section 2034.180 continues former Section 2034(j) without change, except to
20 conform the cross-references.

21 **§ 2034.190. Motion to augment or amend expert witness list or declaration**

22 2034.190. (a) On motion of any party who has engaged in a timely exchange of
23 expert witness information, the court may grant leave to either or both of the
24 following:

25 (1) Augment that party's expert witness list and declaration by adding the name
26 and address of any expert witness whom that party has subsequently retained.

27 (2) Amend that party's expert witness declaration with respect to the general
28 substance of the testimony that an expert previously designated is expected to
29 give.

30 (b) A motion under subdivision (a) shall be made at a sufficient time in advance
31 of the time limit for the completion of discovery under Article 8 to permit the
32 deposition of any expert to whom the motion relates to be taken within that time
33 limit. Under exceptional circumstances, the court may permit the motion to be
34 made at a later time.

35 (c) The motion shall be accompanied by a declaration under Section 2023.060.

36 **Comment.** Subdivision (a) of Section 2034.190 continues the first sentence of former Section
37 2034(k) without substantive change.

38 Subdivision (b) continues the second and third sentences of former Section 2034(k) without
39 substantive change.

40 Subdivision (c) continues the fourth sentence of former Section 2034(k) without substantive
41 change.

1 **§ 2034.200. Order on motion to augment or amend expert witness list or declaration**

2 2034.200. The court shall grant leave to augment or amend an expert witness list
3 or declaration only if all of the following conditions are satisfied:

4 (a) The court has taken into account the extent to which the opposing party has
5 relied on the list of expert witnesses.

6 (b) The court has determined that any party opposing the motion will not be
7 prejudiced in maintaining that party's action or defense on the merits.

8 (c) The court has determined either of the following:

9 (1) The moving party would not in the exercise of reasonable diligence have
10 determined to call that expert witness or have decided to offer the different or
11 additional testimony of that expert witness.

12 (2) The moving party failed to determine to call that expert witness, or to offer
13 the different or additional testimony of that expert witness as a result of mistake,
14 inadvertence, surprise, or excusable neglect, and the moving party has done both
15 of the following:

16 (A) Sought leave to augment or amend promptly after deciding to call the expert
17 witness or to offer the different or additional testimony.

18 (B) Promptly thereafter served a copy of the proposed expert witness
19 information concerning the expert or the testimony described in Section 2034.070
20 on all other parties who have appeared in the action.

21 (d) Leave to augment or amend is conditioned on the moving party making the
22 expert available immediately for a deposition under Sections 2034.110 to
23 2034.170, inclusive, and on any other terms as may be just, including, but not
24 limited to, leave to any party opposing the motion to designate additional expert
25 witnesses or to elicit additional opinions from those previously designated, a
26 continuance of the trial for a reasonable period of time, and the awarding of costs
27 and litigation expenses to any party opposing the motion.

28 **Comment.** Subdivisions (a), (b), and (c) of Section 2034.200 continue the sixth sentence of the
29 first paragraph of former Section 2034(k) without substantive change.

30 Subdivision (d) continues the seventh sentence of the first paragraph of former Section 2034(k)
31 without substantive change.

32 **§ 2034.210. Monetary sanction for unsuccessfully making or opposing motion to augment or**
33 **amend expert witness information**

34 2034.210. Except as provided in Section 2023.140, the court shall impose a
35 monetary sanction under Article 7 against any party, person, or attorney who
36 unsuccessfully makes or opposes a motion to augment or amend expert witness
37 information.

38 **Comment.** Section 2034.210 continues the second paragraph of former Section 2034(k)
39 without substantive change.

1 **§ 2034.220. Motion to submit tardy expert witness information**

2 2034.220. (a) On motion of any party who has failed to submit expert witness
3 information on the date specified in a demand for that exchange, the court may
4 grant leave to submit that information on a later date.

5 (b) A motion under subdivision (a) shall be made a sufficient time in advance of
6 the time limit for the completion of discovery under Article 8 to permit the
7 deposition of any expert to whom the motion relates to be taken within that time
8 limit. Under exceptional circumstances, the court may permit the motion to be
9 made at a later time.

10 (c) The motion shall be accompanied by a declaration under Section 2023.060.

11 **Comment.** Subdivision (a) of Section 2034.220 continues the first sentence of former Section
12 22034(l) without change.

13 Subdivision (b) continues the second and third sentences of former Section 22034(l) without
14 substantive change.

15 Subdivision (c) continues the fourth sentence of former Section 22034(l) without substantive
16 change.

17 **§ 2034.230. Order on motion to submit tardy expert witness information**

18 2034.220. The court shall grant leave to submit tardy expert witness information
19 only if all of the following conditions are satisfied:

20 (a) The court has taken into account the extent to which the opposing party has
21 relied on the absence of a list of expert witnesses.

22 (b) The court has determined that any party opposing the motion will not be
23 prejudiced in maintaining that party's action or defense on the merits.

24 (c) The court has determined that the moving party did all of the following:

25 (1) Failed to submit the information as the result of mistake, inadvertence,
26 surprise, or excusable neglect.

27 (2) Sought leave to submit the information promptly after learning of the
28 mistake, inadvertence, surprise, or excusable neglect.

29 (3) Promptly thereafter served a copy of the proposed expert witness information
30 described in Section 2034.070 on all other parties who have appeared in the action.

31 (d) The order is conditioned on the moving party making the expert available
32 immediately for a deposition under Sections 2034.110 to 2034.170, inclusive, and
33 on any other terms as may be just, including, but not limited to, leave to any party
34 opposing the motion to designate additional expert witnesses or to elicit additional
35 opinions from those previously designated, a continuance of the trial for a
36 reasonable period of time, and the awarding of costs and litigation expenses to any
37 party opposing the motion.

38 **Comment.** Subdivisions (a), (b), and (c) of Section 2034.230 continue the first sentence of the
39 second paragraph of former Section 2034(l) without substantive change.

40 Subdivision (d) continues the second sentence of the second paragraph of former Section
41 2034(l) without substantive change.

1 (b) Inspections of documents, things, and places.

2 (c) Physical and mental examinations.

3 **Comment.** Section 2035.020 continues former Section 2035(b) without substantive change.

4 **§ 2035.030. Petition**

5 2035.030. (a) One who desires to perpetuate testimony or preserve evidence for
6 the purposes set forth in Section 2035.010 shall file a verified petition in the
7 superior court of the county of the residence of at least one expected adverse party,
8 or, if no expected adverse party is a resident of the State of California, in the
9 superior court of a county where the action or proceeding may be filed.

10 (b) The petition shall be titled in the name of the one who desires the
11 perpetuation of testimony or the preservation of evidence. The petition shall set
12 forth all of the following:

13 (1) The expectation that the petitioner will be a party to an action cognizable in a
14 court of the State of California.

15 (2) The present inability of the petitioner either to bring that action or to cause it
16 to be brought.

17 (3) The subject matter of the expected action and the petitioner's involvement.

18 (4) The particular discovery methods described in Section 2035.020 that the
19 petitioner desires to employ.

20 (5) The facts that the petitioner desires to establish by the proposed discovery.

21 (6) The reasons for desiring to perpetuate or preserve these facts before an action
22 has been filed.

23 (7) The name or a description of those whom the petitioner expects to be adverse
24 parties so far as known.

25 (8) The name and address of those from whom the discovery is to be sought.

26 (9) The substance of the information expected to be elicited from each of those
27 from whom discovery is being sought.

28 (c) The petition shall request the court to enter an order authorizing the petitioner
29 to engage in discovery by the described methods for the purpose of perpetuating
30 the described testimony or preserving the described evidence.

31 **Comment.** Subdivision (a) of Section 2035.030 continues former Section 2035(c) without
32 change, except to conform the cross-reference.

33 The introductory clause of subdivision (b) continues the introductory clause of former Section
34 2035(d) without change. Paragraphs (b)(1)-(b)(9) continue former Section 2035(d)(1)-(d)(9)
35 without change, except to conform the cross-reference.

36 Subdivision (c) continues the last paragraph of former Section 2035(d) without change.

37 Subdivision (d) continues the first sentence of the second paragraph of former Section 2035(e)
38 without change.

39 Subdivision (e) continues the second and third sentences of the second paragraph of former
40 Section 2035(e) without change.

41 **§ 2035.040. Service of notice of petition**

42 2035.040. (a) The petitioner shall cause service of a notice of the petition under
43 Section 2035.030 to be made on each natural person or organization named in the

1 petition as an expected adverse party. This service shall be made in the same
2 manner provided for the service of a summons.

3 (b) The service of the notice shall be accompanied by a copy of the petition. The
4 notice shall state that the petitioner will apply to the court at a time and place
5 specified in the notice for the order requested in the petition.

6 (c) This service shall be effected at least 20 days before the date specified in the
7 notice for the hearing on the petition.

8 (d) If after the exercise of due diligence, the petitioner is unable to cause service
9 to be made on any expected adverse party named in the petition, the court in which
10 the petition is filed shall make an order for service by publication.

11 (e) If any expected adverse party served by publication does not appear at the
12 hearing, the court shall appoint an attorney to represent that party for all purposes,
13 including the cross-examination of any person whose testimony is taken by
14 deposition. The court shall order that the petitioner pay the reasonable fees and
15 expenses of any attorney so appointed.

16 **Comment.** Subdivision (a) of Section 2035.040 continues the first and second sentences of
17 former Section 2035(e) without substantive change.

18 Subdivision (b) continues the third and fourth sentences of former Section 2035(e) without
19 change.

20 Subdivision (c) continues the fifth sentence of former Section 2035(e) without substantive
21 change.

22 **§ 2035.050. Court order**

23 2035.050. (a) If the court determines that all or part of the discovery requested
24 under this article may prevent a failure or delay of justice, it shall make an order
25 authorizing that discovery.

26 (b) The order shall identify any witness whose deposition may be taken, and any
27 documents, things, or places that may be inspected, and any person whose physical
28 or mental condition may be examined.

29 (c) Any authorized depositions, inspections, and physical or mental
30 examinations shall then be conducted in accordance with the provisions of this
31 chapter relating to those methods of discovery in actions that have been filed.

32 **Comment.** Subdivision (a) of Section 2035.050 continues the first sentence of former Section
33 2035(f) without substantive change.

34 Subdivision (b) continues the second sentence of former Section 2035(f) without change.

35 Subdivision (c) continues the third sentence of former Section 2035(f) without substantive
36 change.

37 **§ 2035.060. Use of presuit deposition to perpetuate testimony**

38 2035.060. If a deposition to perpetuate testimony has been taken either under the
39 provisions of this article, or under comparable provisions of the laws of another
40 state, or the federal courts, or a foreign nation, that deposition may be used, in any
41 action involving the same subject matter that is brought in a court of the State of
42 California, in accordance with Section 2025.300 against any party, or the

1 successor in interest of any party, named in the petition as an expected adverse
2 party.

3 **Comment.** Section 2035.060 continues former Section 2035(g) without substantive change.

4 Article 20. Perpetuation of Testimony or Preservation of Information
5 Pending Appeal

6 **§ 2036.010. Perpetuation of testimony or preservation of information pending appeal**

7 2036.010. If an appeal has been taken from a judgment entered by any court of
8 the State of California, or if the time for taking an appeal has not expired, a party
9 may obtain discovery within the scope delimited by Articles 2 and 3, and subject
10 to the restrictions set forth in Article 5, for the purpose of perpetuating testimony
11 or preserving information for use in the event of further proceedings in that court.

12 **Comment.** Section 2036.010 continues former Section 2036(a) without change, except to
13 conform the cross-references.

14 **§ 2036.020. Methods of discovery**

15 2036.020. The methods available for discovery for the purpose set forth in
16 Section 2036.010 are all of the following:

- 17 (a) Oral and written depositions.
18 (b) Inspections of documents, things, and places.
19 (c) Physical and mental examinations.

20 **Comment.** Section 2036.020 continues former Section 2036(b) without substantive change.

21 **§ 2036.030. Motion for leave to conduct discovery pending appeal**

22 2036.030. (a) A party who desires to obtain discovery pending appeal shall
23 obtain leave of the court that entered the judgment. This motion shall be made on
24 the same notice to and service of parties as is required for discovery sought in an
25 action pending in that court.

26 (b) The motion for leave to conduct discovery pending appeal shall set forth all
27 of the following:

- 28 (1) The names and addresses of the natural persons or organizations from whom
29 the discovery is being sought.
30 (2) The particular discovery methods described in Section 2036.020 for which
31 authorization is being sought.
32 (3) The reasons for perpetuating testimony or preserving evidence.

33 **Comment.** Subdivision (a) of Section 2036.030 continues former Section 2036(c) without
34 change.

35 Subdivision (b) continues former Section 2036(d) without substantive change.

36 **§ 2036.040. Court order**

37 2036.040. (a) If the court determines that all or part of the discovery requested
38 under this article may prevent a failure or delay of justice in the event of further

1 proceedings in the action in that court, it shall make an order authorizing that
2 discovery.

3 (b) The order shall identify any witness whose deposition may be taken, and any
4 documents, things, or places that may be inspected, and any person whose physical
5 or mental condition may be examined.

6 (c) Any authorized depositions, inspections, and physical and mental
7 examinations shall then be conducted in accordance with the provisions of this
8 chapter relating to these methods of discovery in a pending action.

9 **Comment.** Subdivision (a) of Section 2036.040 continues the first sentence of former Section
10 2036(e) without substantive change.

11 Subdivision (b) continues the second sentence of former Section 2036(e) without change.

12 Subdivision (c) continues the third sentence of former Section 2036(e) without change, except
13 to conform the cross-reference.

14 **§ 2036.050. Use of deposition to perpetuate testimony pending appeal**

15 2036.050. If a deposition to perpetuate testimony has been taken under the
16 provisions of this article, it may be used in any later proceeding in accordance with
17 Section 2025.300.

18 **Comment.** Section 2036.050 continues former Section 2036(f) without substantive change.
