

Memorandum 2004-16

**Civil Discovery: Nonsubstantive Reform
(Obsolete Cross References)**

At the February meeting, the Commission directed the staff to remove a number of conforming revisions from the recommendation on nonsubstantive reorganization of the civil discovery statute. Those conforming revisions required further study, because it appeared that the provisions had never been properly conformed to reflect enactment of the Civil Discovery Act of 1986.

One of the problematic provisions, Insurance Code Section 11580.2, was discussed at length in Memorandum 2004-13. This memorandum analyzes each of the remaining provisions to determine the modern equivalent of each outdated cross-reference to a civil discovery provision. The provisions are discussed in the following order:

- (1) Business and Professions Code Section 25009
- (2) Code of Civil Procedure Section 1283
- (3) Code of Civil Procedure Section 1991.2
- (4) Education Code Section 44944
- (5) Government Code Section 12963.3
- (6) Government Code Section 68097.6
- (7) Health and Safety Code Section 1424.1

The following documents are attached as Exhibits:

	<i>Exhibit p.</i>
1. Former Code of Civil Procedure Section 2016, 1965 Cal. Stat. ch. 299, § 125	1
2. Former Code of Civil Procedure Section 2019, 1961 Cal. Stat. ch. 192, § 1	3
3. Former Code of Civil Procedure Section 2019, 1963 Cal. Stat. ch. 519, § 1	4
4. Former Code of Civil Procedure Section 1283, 1961 Cal. Stat. ch. 461, § 2	8
5. Former Code of Civil Procedure Sections 2024-2028, 1957 Cal. Stat. ch. 1904, § 3	9
6. Former Code of Civil Procedure Section 2034, 1959 Cal. Stat. ch. 1590, § 12	11

7. Former Code of Civil Procedure Section 2034, 1974 Cal. Stat. ch. 732, § 4	13
8. Former Code of Civil Procedure Section 2019, 1982 Cal. Stat. ch. 192, § 1	16
9. Code of Civil Procedure Section 2025(i)	21

The staff is in the process of preparing a draft of a tentative recommendation incorporating the staff’s recommendations. We plan to include the draft in a supplement to this memorandum.

BUSINESS AND PROFESSIONS CODE SECTION 25009

Of the provisions with obsolete cross-references, Business and Professions Code Section 25009 is perhaps the most complicated to analyze. The provision relates to certain court proceedings concerning the regulation of alcoholic beverages. It falls under Chapter 12 of Division 9 of the Code, which deals with beer price posting and marketing regulations. In a nutshell, Section 25009 states that a defendant or a witness in an action brought under Chapter 12 may be compelled to appear in court and produce books and records for evidence. The full text reads:

25009. Any defendant in any action brought under this chapter or any person who may be a witness therein under **Sections 2016, 2018, and 2019 of the Code of Civil Procedure** or Section 776 of the Evidence Code, and the books and records of any such defendant or witness, may be brought into court and the books and records may be introduced by reference into evidence, but no information so obtained may be used against the defendant or any such witness as a basis for a misdemeanor prosecution under this chapter.

The cross-references in bold date to a 1965 amendment of Section 25009. 1965 Cal. Stat. ch. 299, § 5. This amendment predates the Civil Discovery Act of 1986, which moved the substantive content of Sections 2016, 2018, and 2019 — rendering the cross-references incorrect. 1986 Cal. Stat. ch. 1334, §§ 1, 2. At the time of the enactment of Section 25009, former sections 2016, 2018, and 2019 dealt with the scope and procedural rules of discovery. The Civil Discovery Act moved these provisions and also altered their substantive content. Thus, a close examination of the current code is required to establish the proper location of the present-day cross-references. This memo will treat each cross-reference in turn, identifying the modern equivalent of the cited provision. We then take a step

back and consider whether mechanical substitution of the modern equivalents is appropriate given the statutory purpose.

Former Section 2016

Former Section 2016 (1965 Cal. Stat. ch. 299, §125) was a catchall discovery statute that covered the scope of discovery, attorney work-product protection, and procedures for an oral or written deposition. See Exhibit pp. 1-2. It was repealed in 1986 with the passage of the Civil Discovery Act. 1986 Cal. Stat. ch. 1334, § 1. The substantive content of former Section 2016 was disbursed throughout the code, landing in four separate provisions.

The bulk of former Section 2016 dealt with the nuts and bolts of discovery, including such things as: Who could take testimony, who could be deposed, when a protective order would be granted, how a deposition could be used in court, and when an objection could be made. See Exhibit pp. 1-2. These provisions appear to have been relocated, along with content from other repealed discovery provisions, to Sections 2017 and 2025.

Section 2017 deals with the scope of discovery, covering such issues as who may be deposed, when a protective order can be issued, and other limitations on discovery. See, e.g., Section 2017(a) and (c). These issues were addressed in former Section 2016. Section 2025 governs procedures for an oral deposition in California, laying out numerous specific procedural rules. These issues were also addressed in former Section 2016, although not to the same extent.

Taken together, Sections 2017 and 2025 perhaps cover more legal ground than former Section 2016, but this seems largely due to substantive changes in law and society, and perhaps due to a desire for more specificity in the code. Section 2025, for example, includes rules for video recording, a deposition tool that was probably not widely used in 1965. See Section 2025(d)(5). Likewise, Section 2017 includes special discovery rules for a sexual harassment suit, a reaction to a new development in the law. See Section 2017(d). Despite the differences, Sections 2017 and 2025 are undoubtedly the successor provisions to former Section 2016. See J. Hogan & G. Weber, *California Civil Discovery Appendix C: Reporter's Notes* 371-73 (noting that Section 2017 is derived from former Section 2016), 399 (noting that Section 2025 contains substance from ten former statutes, including former Section 2016). Thus, **the outdated cross-reference in Business and Professions Code Section 25009 corresponds to Sections 2017 and 2025.**

Two minor aspects of former Section 2016 do not appear in either Section 2017 or Section 2025: Procedures for a written deposition and attorney work-product protection.

The “written deposition” provision in former Section 2016 is actually minor: The first sentence of subdivision (a) simply states that “Any party may take the testimony of any person, including a party, by deposition upon oral examination or *written interrogatories* for the purpose of discovery” See Exhibit pp. 1-2. The present-day statute governing an oral deposition in California — Section 2025 — only covers that topic. A written deposition is today covered by a separate provision, Section 2028. Section 2028 references the procedures set forth in Section 2025, but modifies them slightly. Due to these modifications, **it is worth considering a specific cross-reference to Section 2028**, as well as the previously mentioned references to Sections 2017 and 2025.

Attorney work-product protection was also governed by former Section 2016. Subdivision (g) set forth the state’s policy to “preserve the rights of attorneys to prepare cases for trial with that degree of privacy necessary to encourage them to prepare their cases thoroughly....” See Exhibit pp. 1-2. This provision was moved to Section 2018 by the Civil Discovery Act of 1986. See J. Hogan & G. Weber, *California Civil Discovery Appendix C: Reporter’s Notes* 373-75. It was also substantially expanded. Due to this relocation, **a technically faithful update of Business and Professions Code Section 25009 would include a cross-reference to Section 2018 as well.**

Former Section 2018

Former Section 2018 (1961 Cal. Stat. ch. 192, § 1) was a short provision which governed the taking of a deposition outside California. See Exhibit p. 3. Subdivision (a) dealt with a deposition in another state or a U.S. territory, while subdivision (b) addressed a deposition in a foreign country. *Id.* Subdivision (c) stated that no deposition could be taken before a person who was a relative, employee, or attorney; nor could the person be financially interested in the action. *Id.*

The current provision most analogous to subdivision (a) is Section 2026, which deals exclusively with a deposition taken in another state or a U.S. territory. Section 2026 reads:

2026. (a) Any party may obtain discovery by taking an oral deposition, as described in subdivision (a) of Section 2025, in

another state of the United States, or in a territory or an insular possession subject to its jurisdiction. Except as modified in this section, the procedures for taking oral depositions in California set forth in Section 2025 apply to an oral deposition taken in another state of the United States, or in a territory or an insular possession subject to its jurisdiction.

(b)(1) If a deponent is a party to the action or an officer, director, managing agent, or employee of a party, the service of the deposition notice is effective to compel that deponent to attend and to testify, as well as to produce any document or tangible thing for inspection and copying. The deposition notice shall specify a place in the state, territory, or insular possession of the United States that is within 75 miles of the residence or a business office of a deponent.

(2) If the deponent is not a party to the action or an officer, director, managing agent, or employee of a party, a party serving a deposition notice under this section shall use any process and procedures required and available under the laws of the state, territory, or insular possession where the deposition is to be taken to compel the deponent to attend and to testify, as well as to produce any document or tangible thing for inspection, copying, and any related activity.

(c) A deposition taken under this section shall be conducted (1) under the supervision of a person who is authorized to administer oaths by the laws of the United States or those of the place where the examination is to be held, and who is not otherwise disqualified under subdivision (k) and subparagraph (B) of paragraph (2) of subdivision (l) of Section 2025, or (2) before a person appointed by the court. This appointment is effective to authorize that person to administer oaths and to take testimony. On request, the clerk of the court shall issue a commission authorizing the deposition in another state or place. The commission shall request that process issue in the place where the examination is to be held, requiring attendance and enforcing the obligations of the deponents to produce documents and answer questions. The commission shall be issued by the clerk to any party in any action pending in its venue without a noticed motion or court order. The commission may contain such terms as are required by the foreign jurisdiction to initiate the process. If a court order is required by the foreign jurisdiction, an order for a commission may be obtained by ex parte application.

Although Section 2026 goes into considerably more detail than the former Section 2018(a), it is the only provision dealing with an out-of-state deposition. The Reporter's Notes to the Civil Discovery Act of 1986 also verify that Section

2026 is partially derived from former Section 2018(a). J. Hogan & G. Weber, *California Civil Discovery Appendix C: Reporter's Notes* 406-07. Thus, **it appears that Section 2026 is the correct cross-reference.**

The current provision most analogous to former Section 2018(b) is Section 2027, which governs a deposition in a foreign nation. The text reads:

2027. (a) Any party may obtain discovery by taking an oral deposition, as described in subdivision (a) of Section 2025, in a foreign nation. Except as modified in this section, the procedures for taking oral depositions in California set forth in Section 2025 apply to an oral deposition taken in a foreign nation.

(b)(1) If a deponent is a party to the action or an officer, director, managing agent, or employee of a party, the service of the deposition notice is effective to compel the deponent to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.

(2) If a deponent is not a party to the action or an officer, director, managing agent or employee of a party, a party serving a deposition notice under this section shall use any process and procedures required and available under the laws of the foreign nation where the deposition is to be taken to compel the deponent to attend and to testify, as well as to produce any document or tangible thing for inspection, copying, and any related activity.

(c) A deposition taken under this section shall be conducted under the supervision of (1) a person who is authorized to administer oaths or their equivalent by the laws of the United States or of the foreign nation, and who is not otherwise disqualified under subdivision (k) and subparagraph (B) of paragraph (2) of subdivision (l) of Section 2025; (2) a person or officer appointed by commission or under letters rogatory; or (3) any person agreed to by all the parties.

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

The updated provision presents a situation similar to the one with subdivision (a) — the newer law is much more detailed, but it is the current law on point. See J. Hogan & G. Weber, *California Civil Discovery Appendix C:*

Reporter's Notes 408-09 (noting that Section 2027 derives from former Section 2018(b)). Thus, **Section 2027 appears to be the correct cross-reference.**

Finally, former Section 2018(c) specifies grounds for disqualification of a person taking a deposition. The analogous provision today is Section 2025(k), but a specific cross-reference to this subdivision does not seem necessary for two reasons: First, Section 2025 is already referenced generically (see discussion of former Section 2016 above). Second, both Sections 2026 and 2027 cross-reference the disqualification provisions of Section 2025. Most importantly, Sections 2026 and 2027 both point specifically to Section 2025(k), which disqualifies a deposition officer who is financially interested, or who is a relative or employee of a party or attorney. Section 2025(k)(1).

To summarize, the substance of former Section 2018 has been relocated to Sections 2026 and 2027. Thus, **if the Commission wants to make a technically faithful update of the outdated cross-reference to former Section 2018, the cross-reference should be corrected to refer to Sections 2026 and 2027.**

Former Section 2019

Former Section 2019 (1963 Cal. Stat. ch. 519, § 1) governed procedures for taking an oral deposition in California. See Exhibit pp. 4-7. This section was repealed by the Civil Discovery Act of 1986, and a new version of Section 2019 was enacted. 1986 Cal. Stat. ch. 1334, §§ 1, 2. The present Section 2019 lists approved methods for discovery, and it has no relation to the former provision.

The Civil Discovery Act bifurcated former Section 2019 into two separate provisions. The bulk of the substance of former Section 2019 was relocated to Section 2025, a lengthy provision which governs the majority of deposition-related issues. See J. Hogan & G. Weber, *California Civil Discovery Appendix C: Reporter's Notes* 399 (noting that Section 2025 derives partially from former Section 2019). Former Section 2019 covered, *inter alia*, notice procedures for a party desiring to take a deposition, protective orders, procedures for producing books, documents, and other records, and regulations regarding deposition transcripts. See Exhibit pp. 4-7. Section 2025 now covers all of these subjects except one.

The only aspect of former Section 2019 missing in Section 2025 relates to a stipulation modifying discovery procedures. That provision was located in former Section 2019(a)(2), and stated:

(a)

(2) If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions.

See Exhibit pp. 4-7.

The most analogous provision in the current code is Section 2021, which contains substantially similar language to former Section 2019(a)(2):

2021. Unless the court orders otherwise, the parties may by written stipulation (a) provide that depositions may be taken before any person, at any time or place, on any notice, and in any manner, and when so taken may be used like other depositions, and (b) modify the procedures provided by this article for other methods of discovery.

The primary difference between the two provisions is that Section 2021 allows a court to prevent the parties from stipulating to modify standard civil discovery procedures. Aside from this, the provisions accomplish the same goal.

Thus, **the cross-reference to Section 2019 corresponds to Sections 2021 and 2025.** Together with the other revisions discussed, **a technically faithful update of Business and Professions Code Section 25009 would be as follows:**

Bus. & Prof. Code § 25009 (amended). Evidence

SEC. ____. Section 25009 of the Business and Professions Code is amended to read:

25009. Any defendant in any action brought under this chapter or any person who may be a witness therein under Sections 2016, 2018, and 2019 2017, 2018, 2021, and 2025 to 2028, inclusive, of the Code of Civil Procedure or Section 776 of the Evidence Code, and the books and records of any such defendant or witness, may be brought into court and the books and records may be introduced by reference into evidence, but no information so obtained may be used against the defendant or any such witness as a basis for a misdemeanor prosecution under this chapter.

Comment. Section 25009 is amended to reflect revision and relocation of the civil discovery provisions referenced in it (former Code Civ. Proc. §§ 2016, 2018, and 2019), which pertained to the scope of and procedures for discovery. Former Code of Civil Procedure Sections 2016, 2018, and 2019 were repealed in 1986 and their substance relocated to Code of Civil Procedure Sections 2017, 2018, 2021, and 2025-2028. 1986 Cal. Stat. ch. 1334, §§ 1, 2. Business and Professions Code Section 25009 was not revised at that time to reflect the repeal of former Code of Civil Procedure Sections 2016,

2018, and 2019, and the relocation. It is now amended to reflect that change.

Statutory Purpose

Although the amendment set forth above would faithfully conform the cross-references in Business and Professions Code Section 25009 to their modern equivalents, the staff is not sure that it is the best approach. Rather, we question whether it is necessary to list specific provisions in the Civil Discovery Act, as opposed to referring to the Act in its entirety.

The gist of the provision seems to be that any defendant in an action under the chapter governing beer price posting and marketing regulations, or a person who may be compelled to testify as a witness in such an action pursuant to the discovery provisions relating to depositions or the provision governing testimony from an adverse witness (Evid. Code § 776), may be brought into court and compelled to testify and produce books and records, but the information so obtained cannot be used against the defendant or witness as a basis for a misdemeanor prosecution under the chapter governing beer price posting and marketing regulations. By prohibiting use of the witness' evidence for a misdemeanor prosecution under the chapter, the statute generally makes it possible to compel a defendant or other witness to testify without being able to assert the constitutional privilege against self-incrimination (U.S. Const. amend. V; Cal. Const. art. I, § 15). That is because violation of the chapter is punishable only as a misdemeanor or by civil remedies, not as a felony. Bus. & Prof. Code §§ 25000.0, 25004, 25008, 25010.

If the purpose of Section 25009 is in fact to facilitate such testimony and evidence, it does not seem necessary to enumerate in detail the relevant provisions of the Civil Discovery Act. **Instead, it may be sufficient to refer to the Act generally, as shown below:**

Bus. & Prof. Code § 25009 (amended). Evidence

SEC. ____. Section 25009 of the Business and Professions Code is amended to read:

25009. Any defendant in any action brought under this chapter or any person who may be a witness therein under ~~Sections 2016, 2018, and 2019~~ Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure or Section 776 of the Evidence Code, and the books and records of any such defendant or witness, may be brought into court and the books and records may be introduced by reference into evidence, but no

information so obtained may be used against the defendant or any such witness as a basis for a misdemeanor prosecution under this chapter.

Comment. Section 25009 is amended to reflect revision and relocation of the civil discovery provisions referenced in it (former Code Civ. Proc. §§ 2016, 2018, and 2019), which were repealed in 1986 and their substance relocated to Code of Civil Procedure Sections 2017, 2018, 2021, and 2025-2028. 1986 Cal. Stat. ch. 1334, §§ 1, 2. For purposes of simplification and to make it easier to keep the cross-references up-to-date in the future, the provision is amended to refer to the Civil Discovery Act generally, rather than to a list of discovery provisions pertaining to depositions. This is not a substantive change.

The Commission needs to decide whether this approach is preferable to the more technically precise approach previously discussed. Another option would be to solicit comment on both approaches. The staff is **tentatively inclined to use the second (more broadbrush) approach**, because it would simplify Section 25009 and make it easier to keep the cross-references up-to-date in the future.

CODE OF CIVIL PROCEDURE SECTION 1283

Code of Civil Procedure Section 1283 is a provision governing the taking of a deposition as evidence in a contractual arbitration. Its full text reads:

1283. On application of a party to the arbitration the neutral arbitrator may order the deposition of a witness to be taken for use as evidence and not for discovery if the witness cannot be compelled to attend the hearing or if such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally at the hearing, to allow the deposition to be taken. The deposition shall be taken in the manner prescribed by law for the taking of depositions in civil actions. If the neutral arbitrator orders the taking of the deposition of a witness who resides outside the state, the party who applied for the taking of the deposition shall obtain a commission therefor from the superior court in accordance with **Sections 2024 to 2028, inclusive, of this code.**

The cross-reference in bold presents two problems. First, Section 1283 was enacted in 1970 and has never been amended. See 1970 Cal. Stat. ch. 1045, § 1. As such, it predates the Civil Discovery Act of 1986 and the dramatic restructuring

of the state's civil discovery provisions. The second problem is that Sections 2026, 2027, and 2028 did not exist when Section 1283 was enacted in 1970 — these code numbers were dormant from 1961 to 1986. See 1961 Cal. Stat. ch 192, §§ 8-10; 1986 Cal. Stat. ch. 1334, § 2. Thus, the cross-reference is suspect for two reasons: Section 1283 originally referred to nonexistent provisions, and it now refers to provisions enacted 16 years after it became law. A proper revision of Section 1283 first requires an examination of what the Legislature most likely meant when it referred to the nonexistent provisions.

The most plausible explanation for the reference to nonexistent statutes is simple legislative error. Prior to 1970, a similar version of Section 1283 was in effect. This provision, enacted in 1961, also referenced “Sections 2024 to 2028.” 1961 Cal. Stat. ch. 461, § 2; see Exhibit p. 8. The Legislature most likely carried the text over without verifying the accuracy of the cross-references.

Even more problematic, though, is the fact that Sections 2026, 2027, and 2028 appear to have already been repealed even before the 1961 version of Section 1283 was enacted. See 1961 Cal. Stat. ch. 192, §§ 8-10. Again, oversight appears to be the only explanation for the mistaken cross-reference, as the Legislature did not lift language from an older version of Section 1283. The only version existing prior to 1961 dated to 1872 and referred to the appointment of arbitrators, a topic presently covered by Sections 1281.6 and 1282.

The most conceivable explanation is that legislation revamping Section 1283 was proposed prior to the passage of the bill repealing Sections 2026 to 2028. The repeal of Sections 2026 to 2028 passed first, no correction of the bill revamping Section 1283 was ever made, and no one ever noticed.

The complications of legislative history aside, it is fairly clear how the cross-reference should be corrected. The portion of Section 1283 in question deals with procedures for obtaining a commission for the taking of an out-of-state deposition. Prior to 1961, Sections 2024 to 2028 did in fact cover this topic. See Exhibit pp. 9-10. Today, these topics are primarily covered by Sections 2026 (oral deposition in another state) and 2027 (oral deposition in another nation). See J. Hogan & G. Weber, *California Civil Discovery Appendix C: Reporter's Notes* 406-09. The cross-reference to Section 2024, on the other hand, is no longer correct. Section 2024 presently deals with time limits on discovery — a topic not covered by the pre-1961 versions of Sections 2024-2028. Thus, the revised statute should **delete the cross-reference to Section 2024 and include cross-references to Sections 2026 and 2027.**

A more ambiguous issue concerns Section 1283's cross references to Sections 2025 and 2028. Section 2025 currently sets forth procedures for taking a deposition in California. At first glance, it seems to have no direct relevance to obtaining a commission for taking an out-of-state deposition. However, both Sections 2026 and 2027 incorporate Section 2025 by reference. As a result, a reading of Section 2025 is necessary to understand Sections 2026 and 2027. For example, Section 2027(a) states:

(a) Any party may obtain discovery by taking an oral deposition, as described in subdivision (a) of Section 2025, in a foreign nation. Except as modified in this section, the procedures for taking oral depositions in California set forth in Section 2025 apply to an oral deposition taken in a foreign nation.

Including a cross-reference to Section 2025 is, thus, an option for the Commission to consider. Including it might be helpful, as it would allow readers to cross-reference all relevant provisions when reading Section 1283. On the other hand, omitting the reference has no substantive effect on the law, as Section 2025 is already referenced in Sections 2026 and 2027.

Maintaining the reference to Section 2028 is probably less important. The provision incorporates — and slightly modifies — the procedures of Section 2025 to apply to a written deposition. The provision is not referenced in either Section 2026 or Section 2027, and it has no direct relevance to obtaining a commission for taking an out-of-state deposition. The cross-reference to Section 2028 may thus be superfluous.

One further issue concerning Section 1283 relates to its final sentence, which covers a commission for an out-of-state deposition. Section 1283 currently states that a party “shall obtain a commission” from the superior court. While a commission is appropriate for a deposition in another state or U.S. territory, a deposition in a foreign nation generally requires letters rogatory or a letter of request. The need for letters rogatory or a letter of request is recognized elsewhere in the code. Section 2027, for example, states that a court “shall issue a commission, letters rogatory, or a letter of request” when a party seeks to take an oral deposition in a foreign nation. Section 1283 will, in fact, cross-reference Section 2027 if revised as suggested in this memo.

The staff therefore suggests that **the words “letters rogatory, or letter of request” be added to Section 1283**. The addition of these words should not substantively change Section 1283, but they will maintain consistency in the code,

and help make clear that such documents may be obtained for a deposition in arbitration.

Subject to further discussion by the Commission regarding cross-references to Sections 2025 and 2028, the staff tentatively recommends that **Section 1283 be revised along the following lines:**

Code Civ. Proc. § 1283 (amended). Deposition for use as evidence

SEC. _____. Section 1283 of the Code of Civil Procedure is amended to read:

1283. On application of a party to the arbitration the neutral arbitrator may order the deposition of a witness to be taken for use as evidence and not for discovery if the witness cannot be compelled to attend the hearing or if such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally at the hearing, to allow the deposition to be taken. The deposition shall be taken in the manner prescribed by law for the taking of depositions in civil actions. If the neutral arbitrator orders the taking of the deposition of a witness who resides outside the state, the party who applied for the taking of the deposition shall obtain a commission, letters rogatory, or a letter of request therefor from the superior court in accordance with Sections ~~2024 to 2028, inclusive, of this code~~ 2026 and 2027.

Comment. Section 1283 is amended to reflect revision and relocation of the civil discovery provisions referenced in it. As enacted in 1970, the section referred to Sections 2024-2028. 1970 Cal. Stat. ch. 1045, § 1. That cross-reference is obsolete. See 1986 Cal. Stat. ch. 1334, § 1 (repealing former Sections 2024-2025); 1961 Cal. Stat. ch. 192, §§ 8-10 (repealing former Sections 2026-2028). The modern provisions governing an out-of-state deposition are Sections 2026 and 2027.

Section 1283 is also amended to clarify that letters rogatory and a letter of request may be obtained, when necessary, for depositions taken in arbitration.

Section 1283 is also amended to delete surplusage.

CODE OF CIVIL PROCEDURE SECTION 1991.2

Code of Civil Procedure Section 1991.2 is a brief provision that prohibits certain contempt of court provisions from applying to a deposition. The full text reads:

1991.2. On and after the ninety-first day after adjournment of the 1959 Regular Session, the provisions of Section 1991 shall not

apply to any act or omission thereafter occurring in a deposition taken pursuant to **Article 3, Chapter 3, Title 3, Part 4** (commencing at Section 2016) but the provisions of **Section 2034** shall be exclusively applicable.

Section 1991.2 dates from 1959, and contains three clauses that should be revised.

The first phrase in bold, the reference to the 1959 legislative session, is obsolete. The meaning of the statute would be unchanged without the reference. Therefore, **the staff recommends that the reference (and the word “thereafter”) be deleted.**

The second phrase in bold, referring to Article 3, Chapter 3, Title 3, Part 4, is substantively correct. However, it does not conform to modern drafting conventions. The proper phrasing in the modern code is “Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4.” **The cross-reference should be revised to reflect this technical change.**

The third phrase in bold — the reference to Section 2034 — predates the Civil Discovery Act of 1986. At the time when the cross-reference was put into the statute, Section 2034 (1959 Cal. Stat. ch. 1590, § 12) detailed consequences for violations of discovery rules. See Exhibit pp. 11-12. This provision (as later amended) was repealed by the Civil Discovery Act of 1986, and a new Section 2034 was added. 1986 Cal. Stat. ch. 1334, §§ 1, 2.

The current Section 2034 concerns exchanges of expert trial witness information between parties. It makes no mention of consequences for the violation of discovery rules.

The most analogous provision to former Section 2034 is Section 2023, which provides sanctions for discovery misuse. Section 2023 is not identical to former Section 2034, but there are substantial similarities. Sanctions may be imposed, for example, for “failing to respond to or to submit to an authorized method of discovery,” for “making an evasive response to discovery,” and “disobeying a court order to provide discovery.” Section 2023(a)(4), (6), (7). The provision also permits a court, among other things, to impose a monetary sanction, an evidence sanction, and an order striking out the pleadings. Section 2023(b).

Evidence elsewhere in the code further suggests that Section 2023 is the closest successor statute to the former Section 2034. At least one other cross-reference to former Section 2034 has been revised to refer to Section 2023. See, e.g., Code Civ. Proc. § 1991.1, as amended by 1996 Cal. Stat. ch. 124, § 15.5. Both the annotated code and the Reporter’s Notes from the Civil Discovery Act of 1986

indicate that Section 2023 is derived from former Section 2034. See Code Civ. Proc. Ann. § 2023 (historical derivation note); J. Hogan & G. Weber, *California Civil Discovery Appendix C: Reporter's Notes* 386.

Section 1991.2 has never been revised to reflect the repeal of former Section 2034 and the relocation of its substance to Section 2023. To prevent confusion, **the cross-reference to Section 2034 should be corrected**. That could be done by revising Section 1991.2 along the following lines:

Code Civ. Proc. § 1991.2 (amended). Application of Section 1991

SEC. _____. Section 1991.2 of the Code of Civil Procedure is amended to read:

1991.2. ~~On and after the ninety-first day after adjournment of the 1959 Regular Session, the~~ The provisions of Section 1991 shall do not apply to any act or omission thereafter occurring in a deposition taken pursuant to Article 3, ~~Chapter 3, Title 3, Part 4 (commencing at Section 2016)~~ but the (commencing with Section 2016) of Chapter 3. The provisions of Section 2034 shall be 2023 are exclusively applicable.

Comment. Section 1991.2 is amended to delete obsolete language, correct the cross-reference to former Section 2034, and conform to modern drafting conventions. For the text of former Section 2034, see 1959 Cal. Stat. ch. 1590, § 12.

EDUCATION CODE SECTION 44944

Education Code 44944 details hearing procedures for a dismissed or suspended employee of a state-run educational institution. Subdivision (a) sets forth these procedures largely through incorporation by reference to other provisions:

44944. (a) In a dismissal or suspension proceeding initiated pursuant to Section 44934, if a hearing is requested by the employee, the hearing shall be commenced within 60 days from the date of the employee's demand for a hearing. The hearing shall be initiated, conducted, and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. However, the hearing date shall be established after consultation with the employee and the governing board, or their representatives, and the Commission on Professional Competence shall have all the power granted to an agency in that chapter, except that the right of discovery of the parties shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and

duties of any party in a civil action brought in a superior court under **Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure**. Notwithstanding any provision to the contrary, and except for the taking of oral depositions, no discovery shall occur later than 30 calendar days after the employee is served with a copy of the accusation pursuant to Section 11505 of the Government Code. In all cases, discovery shall be completed prior to seven calendar days before the date upon which the hearing commences. If any continuance is granted pursuant to Section 11524 of the Government Code, the time limitation for commencement of the hearing as provided in this subdivision shall be extended for a period of time equal to such continuance. However, the extension shall not include that period of time attributable to an unlawful refusal by either party to allow the discovery provided for in this section.

If the right of discovery granted under the preceding paragraph is denied by either the employee or the governing board, all the remedies in **Section 2034 of the Code of Civil Procedure** shall be available to the party seeking discovery and the court of proper jurisdiction, to entertain his or her motion, shall be the superior court of the county in which the hearing will be held.

The time periods in this section and of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and of **Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure** shall not be applied so as to deny discovery in a hearing conducted pursuant to this section.

The superior court of the county in which the hearing will be held may, upon motion of the party seeking discovery, suspend the hearing so as to comply with the requirement of the preceding paragraph.

No witness shall be permitted to testify at the hearing except upon oath or affirmation. No testimony shall be given or evidence introduced relating to matters which occurred more than four years prior to the date of the filing of the notice. Evidence of records regularly kept by the governing board concerning the employee may be introduced, but no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.

The first cross-reference in bold — to Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure — is incorrect. Article 3 (commencing with Section 2016) is contained in Title 3, not Title 4. **The reference should be corrected.**

The second cross-reference in bold — to Code of Civil Procedure Section 2034 — predates the Civil Discovery Act of 1986. At the time when the cross-reference was put into the statute, Section 2034 (1974 Cal. Stat. ch. 732, § 4) detailed consequences for violations of discovery rules. See Exhibit pp. 13-15. This provision (as later amended) was repealed by the Civil Discovery Act, and a new Section 2034 was added. 1986 Cal. Stat. ch. 1334, §§ 1, 2. As previously explained with regard to Code of Civil Procedure Section 1991.2, the most analogous provision to former Section 2034 is Section 2023, which provides sanctions for discovery misuse. Education Code 44944(a) has never been revised to reflect the repeal of former Section 2034 and the relocation of its substance to Section 2023. To prevent confusion, **the cross-reference to Section 2034 should be corrected.**

The third cross-reference in bold — to Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure — is correct. No revision is necessary.

Thus, **Section 44944(a) should be revised along the following lines:**

Educ. Code § 44944 (amended). Conduct of hearing

SEC. _____. Section 44944 of the Education Code is amended to read:

44944. (a) In a dismissal or suspension proceeding initiated pursuant to Section 44934, if a hearing is requested by the employee, the hearing shall be commenced within 60 days from the date of the employee's demand for a hearing. The hearing shall be initiated, conducted, and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. However, the hearing date shall be established after consultation with the employee and the governing board, or their representatives, and the Commission on Professional Competence shall have all the power granted to an agency in that chapter, except that the right of discovery of the parties shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party in a civil action brought in a superior court under Article 3 (commencing with Section 2016) of Chapter 3 of ~~Title 4~~ Title 3 of Part 4 of the Code of Civil Procedure. Notwithstanding any provision to the contrary, and except for the taking of oral depositions, no discovery shall occur later than 30 calendar days after the employee is served with a copy of the accusation pursuant to Section 11505 of the Government Code. In all cases, discovery shall be completed prior to seven calendar days before the date upon which the hearing commences. If any continuance is granted pursuant to Section 11524 of the

Government Code, the time limitation for commencement of the hearing as provided in this subdivision shall be extended for a period of time equal to such continuance. However, the extension shall not include that period of time attributable to an unlawful refusal by either party to allow the discovery provided for in this section.

If the right of discovery granted under the preceding paragraph is denied by either the employee or the governing board, all the remedies in ~~Section 2034~~ Section 2023 of the Code of Civil Procedure shall be available to the party seeking discovery and the court of proper jurisdiction, to entertain his or her motion, shall be the superior court of the county in which the hearing will be held.

The time periods in this section and of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and of Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure shall not be applied so as to deny discovery in a hearing conducted pursuant to this section.

The superior court of the county in which the hearing will be held may, upon motion of the party seeking discovery, suspend the hearing so as to comply with the requirement of the preceding paragraph.

No witness shall be permitted to testify at the hearing except upon oath or affirmation. No testimony shall be given or evidence introduced relating to matters which occurred more than four years prior to the date of the filing of the notice. Evidence of records regularly kept by the governing board concerning the employee may be introduced, but no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.

....

Comment. Subdivision (a) of Section 44944 is amended to properly reflect the location of the Civil Discovery Act.

Subdivision (a) is also amended to reflect the revision and relocation of former Code of Civil Procedure Section 2034, which pertained to a sanctions for discovery misuse. Former Code of Civil Procedure Section 2034 was repealed in 1986 and its substance relocated to Code of Civil Procedure 2023. 1986 Cal. Stat. ch. 1334, §§ 1, 2. Education Code 44944(a) was not revised at that time to reflect the repeal of former Code of Civil Procedure Section 2034 and the relocation. It is now amended to reflect that change.

GOVERNMENT CODE SECTION 12963.3

Government Code Section 12963.3 sets forth the procedures for the taking of a deposition in an action by the Department of Fair Employment and Housing. Subdivision (b) states:

(b) A deposition may be taken before any officer of the department who has been authorized by the director to administer oaths and take testimony, or before any other person before whom a deposition may be taken in a civil action pursuant to **subdivision (a) of Section 2018 of the Code of Civil Procedure**. The person before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the person's direction and in the person's presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed unless the parties agree otherwise. All objections made at the time of the examination shall be noted on the deposition by the person before whom the deposition is taken, and evidence objected to shall be taken subject to the objections.

The cross-reference in bold predates the Civil Discovery Act of 1986. Former Section 2018(a) set forth guidelines as to who was permitted to take a valid deposition outside the state. The text of former Section 2018(a) read:

(a) Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before any notary public or a judge or officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.

1961 Cal. Stat. ch. 192, § 1.

Former Section 2018(a) was repealed by the Civil Discovery Act, and a new Section 2018 was added. 1986 Cal. Stat. ch. 1334, §§ 1, 2. The current Section 2018 was enacted in 1986 and revised in 1987. 1986 Cal. Stat. ch. 1334, § 2; 1987 Cal. Stat. ch. 86, § 3; 1987 Cal. Stat. ch. 86, § 3.5. It does not relate to depositions, but rather sets forth the state's attorney work-product protection policy. Code Civ. Proc. § 2018.

The most similar provision to former Section 2018(a) is Section 2026(c), which details admissibility rules for an oral deposition taken in another state. Section 2026(c) is not identical to former Section 2018(a), but it is substantially similar in many respects:

(c) A deposition taken under this section shall be conducted (1) under the supervision of a person who is authorized to administer oaths by the laws of the United States or those of the place where the examination is to be held, and who is not otherwise disqualified under subdivision (k) and subparagraph (B) of paragraph (2) of subdivision (l) of Section 2025, or (2) before a person appointed by the court. This appointment is effective to authorize that person to administer oaths and to take testimony. On request, the clerk of the court shall issue a commission authorizing the deposition in another state or place. The commission shall request that process issue in the place where the examination is to be held, requiring attendance and enforcing the obligations of the deponents to produce documents and answer questions. The commission shall be issued by the clerk to any party in any action pending in its venue without a noticed motion or court order. The commission may contain such terms as are required by the foreign jurisdiction to initiate the process. If a court order is required by the foreign jurisdiction, an order for a commission may be obtained by ex parte application.

The Reporter's Notes to the Civil Discovery Act of 1986 confirm that Section 2026(c) restates provisions found in the former Section 2018(a). J. Hogan & G. Weber, *California Civil Discovery Appendix C: Reporter's Notes* 407.

Government Code Section 12963.3 has never been revised to reflect the repeal of former Section 2018(a) and the relocation of its substance to Section 2026(c). This appears to have been an oversight. Thus, **the cross-reference should be corrected as shown below:**

Gov. Code § 12963.3 (amended). Depositions

SEC. ____. Section 12963.3 of the Government Code is amended to read:

12963.3. ... (b) A deposition may be taken before any officer of the department who has been authorized by the director to administer oaths and take testimony, or before any other person before whom a deposition may be taken in a civil action pursuant to ~~subdivision (a) of Section 2018~~ subdivision (c) of Section 2026 of the Code of Civil Procedure. The person before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the person's direction and in the person's presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed unless the parties agree otherwise. All objections made at the time of the examination shall be noted on the deposition by the person before

whom the deposition is taken, and evidence objected to shall be taken subject to the objections.

Comment. Subdivision (b) of Section 12963.3 is amended to reflect revision and relocation of the civil discovery provision referenced in it (former Code Civ. Proc. § 2018(a)), which set forth guidelines for who was permitted to take a valid deposition outside the state. Former Code of Civil Procedure Section 2018(a) was repealed in 1986 and its substance relocated to Code of Civil Procedure 2026(c). 1986 Cal. Stat. ch. 1334, §§ 1, 2. Government Code 12963.3.1(b) was not revised at that time to reflect the repeal of former Code of Civil Procedure Section 2018(a) and the relocation. It is now amended to reflect that change.

GOVERNMENT CODE SECTION 68097.6

Government Code Section 68097.6 details the process for subpoenas for depositions of certain government employees, such as peace officers, firefighters, and sheriffs. The provision makes reference to depositions “pursuant to Section 2019 of the Code of Civil Procedure”:

68097.6. Sections 68097.1, 68097.2, 68097.3, 68097.4, and 68097.5 of this code shall be applicable to subpoenas issued for the taking of depositions of employees of the Department of Justice who are peace officers or analysts in technical fields, peace officers of the Department of the California Highway Patrol, peace officer members of the State Fire Marshal’s office, sheriffs, deputy sheriffs, marshals, deputy marshals, firefighters, or city police officers pursuant to **Section 2019 of the Code of Civil Procedure**.

The cross-reference in bold predates the Civil Discovery Act of 1986. Government Code Section 68097.6 was enacted in 1963. 1963 Cal. Stat. ch. 1485, § 11. At that time, Section 2019 governed procedures for taking an oral deposition in California. See Exhibit pp. 4-7. This section was repealed by the Civil Discovery Act, and a new Section 2019 was added. 1986 Cal. Stat. ch. 1334, §§ 1, 2. The present Section 2019 sets forth the approved methods for discovery, and has no relation to the former provision.

The substance of former Section 2019 was relocated to Section 2025, a lengthy provision which governs the majority of deposition-related issues. See J. Hogan & G. Weber, *California Civil Discovery Appendix C: Reporter’s Notes* 399 (noting that Section 2025 consolidated provisions found in ten former statutes, including those in former Section 2019). Former Section 2019 covered, *inter alia*, notice procedures for a party desiring to take a deposition, protective orders,

procedures for producing books, documents, and other records, and regulations regarding deposition transcripts. See Exhibit pp. 4-7. Section 2025 now covers all of these subjects.

Government Code Section 68097.6 has never been revised to reflect the repeal of former Section 2019 and the relocation of its substance to Section 2025. This appears to have been an oversight. Thus, **the cross-reference should be corrected as shown below:**

Gov. Code § 68097.6 (amended). Subpoenas for depositions of certain employees

SEC. ____ . Section 68097.6 of the Government Code is amended to read:

68097.6. Sections 68097.1, 68097.2, 68097.3, 68097.4, and 68097.5 ~~of this code shall be applicable~~ apply to subpoenas issued for the taking of depositions of employees of the Department of Justice who are peace officers or analysts in technical fields, peace officers of the Department of the California Highway Patrol, peace officer members of the State Fire Marshal's office, sheriffs, deputy sheriffs, marshals, deputy marshals, firefighters, or city police officers pursuant to Section ~~2019~~ 2025 of the Code of Civil Procedure.

Comment. Section 68097.6 is amended to reflect revision and relocation of the civil discovery provision referenced in it (former Code Civ. Proc. § 2019), which set forth guidelines for taking an oral deposition in the state. Former Code of Civil Procedure Section 2019 was repealed in 1986 and its substance relocated to Code of Civil Procedure Section 2025. 1986 Cal. Stat. ch. 1334, §§ 1, 2. Government Code Section 68097.6 was not revised at that time to reflect the repeal of former Code of Civil Procedure Section 2019 and the relocation. It is now amended to reflect that change.

Section 68097.6 is also amended to delete surplusage.

HEALTH AND SAFETY CODE SECTION 1424.1

Health and Safety Code Section 1424.1 pertains to citations, audit programs, and quality assurance logs for long-term health facilities. Subdivision (b) sets forth the conditions under which a quality assurance log is discoverable or admissible as evidence in a court action against the facility:

(b) Except as otherwise provided in this section, a quality assurance log which meets the criteria of this section shall not be discoverable or admissible in any action against the licensee. The quality assurance log shall be discoverable pursuant to a motion to produce under **Section 2031 of the Code of Civil Procedure** and

admissible only for purposes of impeachment. However, the court, in a motion pursuant to **paragraph (1) of subdivision (b) of Section 2019 of the Code of Civil Procedure**, or at trial or other proceeding, may limit access to those entries which would be admissible for impeachment purposes.

The first cross reference in bold — to Section 2031 of the Code of Civil Procedure — does not require revision. Former Section 2031 was repealed by the Civil Discovery Act of 1986, but replaced by a new Section 2031. 1986 Cal. Stat. ch. 1334, §§ 1, 2. Both the former Section 2031 and the current provision concern inspection demands, so revision is not necessary.

The second cross-reference in bold was enacted in 1985 and predates the Civil Discovery Act of 1986. 1985 Cal. Stat. ch. 11, § 10. In 1985, Section 2019(b)(1) set forth the procedure for obtaining a protective order with respect to a deposition. See Exhibit pp. 16-20. It was repealed by the Civil Discovery Act, and a new Section 2019 was added. 1986 Cal. Stat. ch. 1334, §§ 1, 2.

Section 2019(b)(1) as enacted in 1986 and still in force differs in content from former Section 2019(b)(1). It gives courts the power to restrict the use of discovery “where the discovery sought is ‘unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive.’ ”

The most analogous provision to former Section 2019(b)(1) is Section 2025(i), which now governs the procedure for obtaining a protective order with respect to a deposition. Section 2025(i) is not identical to former Section 2019(b)(1), but it is quite similar in many respects. See Exhibit pp. 21-22.

Health and Safety Code Section 1424.1 has never been revised to reflect the repeal of former Section 2019(b)(1) and the relocation of its substance to Section 2025(i). That appears to have been an oversight. To prevent confusion, **the cross-reference should be corrected as shown below:**

Health & Safety Code § 1424.1 (amended). Quality assurance logs

SEC. ____ . Section 1424.1 of the Health and Safety Code is amended to read:

1424.1. ... (b) Except as otherwise provided in this section, a quality assurance log which meets the criteria of this section shall not be discoverable or admissible in any action against the licensee. The quality assurance log shall be discoverable pursuant to a motion to produce under Section 2031 of the Code of Civil Procedure and admissible only for purposes of impeachment. However, the court, in a motion pursuant to ~~paragraph (1) of~~

~~subdivision (b) of Section 2019~~ subdivision (i) of Section 2025 of the Code of Civil Procedure, or at trial or other proceeding, may limit access to those entries which would be admissible for impeachment purposes.

Comment. Subdivision (b) of Section 1424.1 is amended to reflect revision and relocation of the civil discovery provision referenced in it (former Code Civ. Proc. § 2019(b)(1)), which pertained to a motion for a protective order with respect to a deposition. Former Code of Civil Procedure Section 2019(b)(1) was repealed in 1986 and its substance relocated to Code of Civil Procedure 2025(i). 1986 Cal. Stat. ch. 1334, §§ 1, 2. Health and Safety Code 1424.1(b) was not revised at that time to reflect the repeal of former Code of Civil Procedure Section 2019(b)(1) and the relocation. It is now amended to reflect that change.

Respectfully submitted,

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Former Code of Civil Procedure Section 2016, 1965 Cal. Stat. ch. 299, § 125

SEC. 125. Section 2016 of the Code of Civil Procedure is amended to read:

2016. (a) Any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the action or for both purposes. Such depositions may be taken in an action at any time after the service of the summons or in a special proceeding after the service of the petition or after the appearance of the defendant or respondent. After commencement of the action or proceedings, the deposition may be taken without leave of court, except that leave of court, granted with or without notice, and for good cause shown, must be obtained if the notice of the taking of the deposition is served by the plaintiff within 20 days after service of the summons or petition on, or appearance of, the defendant or respondent. The attendance of witnesses or the production of books, documents, or other things at depositions may be compelled by the use of subpoena as provided in Chapter 2 (commencing with Section 1985), Title 3, Part 4 of this code.

(b) Unless otherwise ordered by the court as provided by subdivision (b) or (d) of Section 2019 of this code, the deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the examining party, or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts. It is not ground for objection that the testimony will be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence. All matters which are privileged against disclosure upon the trial under the law of this state are privileged against disclosure through any discovery procedure. This article shall not be construed to change the law of this state with respect to the existence of any privilege, whether provided for by statute or by judicial decision.

The work product of an attorney shall not be discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing his claim or defense or will result in an injustice, and any writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories shall not be discoverable under any circumstances.

(c) Examination and cross-examination of deponents may proceed as permitted at the trial.

(d) At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against

any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party to the record of any civil action or proceeding or of a person for whose immediate benefit said action or proceeding is prosecuted or defended, or of anyone who at the time of taking the deposition was an officer, director, superintendent, member, agent, employee, or managing agent of any such party or person may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (i) that the witness is unavailable as a witness within the meaning of Section 240 of the Evidence Code or (ii) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) Subject to the requirements of this section, a party may offer in evidence all or any part of a deposition, and if such party introduces only part of such deposition, any party may introduce any other parts.

Substitution of parties does not affect the right to use depositions previously taken; and, when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

(e) Subject to the provisions of subdivision (c) of Section 2021 of this code, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(f) A party shall not be deemed to make a person his own witness for any purpose by taking his deposition. Except where the deposition is used under the provisions of paragraph (2) of subdivision (d) of this section, the introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent, or for explaining or clarifying portions of the said deposition offered by an adverse party, makes the deponent the witness of the party introducing the deposition, as to the portions of the deposition introduced by said party. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by another party.

(g) It is the policy of this state (i) to preserve the rights of attorneys to prepare cases for trial with that degree of privacy necessary to encourage them to prepare their cases thoroughly and to investigate not only the favorable but the unfavorable aspects of such cases and (ii) to prevent an attorney from taking undue advantage of his adversary's industry or efforts.

Former Code of Civil Procedure Section 2018, 1961 Cal. Stat. ch. 192, § 1

SECTION 1. Section 2018 of the Code of Civil Procedure is amended to read:

2018. (a) Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before any notary public or a judge or officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.

(b) In a foreign state or country depositions shall be taken on notice before anyone agreed to by the parties, a secretary of embassy or legation, consul general, consul, vice-consul or consular agent of the United States, or before such person or officer as may be appointed by commission or under letters rogatory. A commission or letters rogatory shall be issued by the court in which the action is pending when necessary or convenient on motion and notice and upon such terms and with such directions as are just and appropriate. The person before whom the deposition is to be taken may be designated in notices or commissions either by name or descriptive title and letters rogatory may be addressed "to the appropriate judicial authority in [here name the country]."

(c) No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

Former Code of Civil Procedure Section 2019, 1963 Cal. Stat. ch. 519, § 1

SECTION 1. Section 2019 of the Code of Civil Procedure is amended to read:

2019. (a) (1) A party desiring to take the deposition of any person upon oral examination shall give notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. Such notice must be at least 10 days, adding also one day for every 300 miles of the distance of the place of examination from the residence of the person to whom the notice is given, except that on motion of any party, with or without notice, and for good cause shown, the court may enlarge or shorten the time, or may stay the taking of the deposition until the hearing and determination of a motion for an order pursuant to subdivision (b) of this section. Service of such notice or motion may be made upon any party or his attorney in the manner provided in Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of this code.

(2) If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions.

(3) If an adverse party is in default for not appearing within the time allowed by the law or the court, or if, in a special proceeding, some or all of the parties interested have not appeared, a deposition may be taken without the giving of any notice to the party so in default or not appearing; and in any case on motion of any party, with or without notice, and for good cause shown, the court may authorize the taking of a deposition without the giving of notice to parties who have not been served with summons.

(4) In the case of depositions of a party to the record of any civil action or proceeding or of anyone who at the time of taking the deposition is an officer, director or managing agent of any such party, the service of a subpoena upon any such deponent is not required if proper notice of the taking of such deposition is given to the attorney for such party or to the party, if he has no attorney. In the case of depositions of a person for whose immediate benefit an action or proceeding is prosecuted or defended or of anyone who at the time of taking the deposition is an officer, director or managing agent of any such person, the service of a subpoena upon any such deponent is not required if proper notice of the taking of such deposition is given to the attorney of the party prosecuting or defending the action or proceeding for the immediate benefit of the deponent or to such party, if he has no attorney. A notice to take the deposition of a person described in this subdivision (4) cannot require the attendance of such person at a place more than 150 miles from the residence of such person, unless the party desiring to take such deposition first obtains an order pursuant to the provisions of Section 2019(b)(2) of this code.

(b) (1) After notice is served for taking a deposition by oral examination, upon motion seasonably made by any party or by the person to be examined and upon notice, or upon the court's own motion and after giving counsel an opportunity to

be heard, and in either case for good cause shown, the court in which the action is pending may make an order that the deposition shall not be taken, or that it may be taken only at some designated time or place other than stated in the notice, or that it shall not be taken except by allowing written interrogatories by one or more parties, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed the deposition shall be opened only by order of the court, or that secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court; or the court may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression. In granting or refusing such order the court may impose upon either party or upon the witness the requirement to pay such costs and expenses, including attorney's fees, as the court may deem reasonable.

(2) Notwithstanding Section 1989, the court may, upon motion on 10 days' written notice and for good cause shown, make an order requiring a deponent who is a party to the record of any civil action or proceeding or is a person for whose immediate benefit said action is prosecuted or defended or is at the time of the taking of the deposition an officer, director or managing agent of any such party or person to attend a deposition at a place more than 150 miles from the residence of such deponent. In granting or refusing such order, the court shall consider whether the moving party selected the forum, whether the deponent will be present at the trial, the convenience of the deponent, the suitability of discovery through a deposition by written interrogatories or other discovery methods, the number of depositions sought under this section, the expense to the parties of requiring the deposition to be taken within 150 miles of the residence of the deponent, the whereabouts of the deponent at the time the deposition is scheduled to be taken, and all other factors tending to show whether or not the interests of justice and the convenience of the parties and witnesses will be served by requiring the deponent to appear for his deposition at a place more than 150 miles from his residence. Such order may provide that the party desiring to take such deposition shall pay the reasonable expenses incurred by the deponent in attending such deposition and that he furnish an undertaking approved by the court to secure such payment and may contain such other terms and conditions as are equitable and just.

(c) The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed unless the parties agree otherwise. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu

of participating in the oral examination, parties served with notice of taking a deposition may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim.

(d) At any time during the taking of the deposition, on motion of any party or of the deponent, or upon the court's own motion and after giving counsel an opportunity to be heard, and in either case upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the superior court in the county where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in subdivision (b) of this section. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. In granting or refusing such order the court may impose upon either party or upon the witness the requirement to pay such costs or expenses, including attorney's fees, as the court may deem reasonable.

(e) When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress under subdivision (d) of Section 2021 of this code the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) (1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly file it with the court in which the action is pending or send it by registered mail to the clerk thereof for filing.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(g) (1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay such other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees.

**Former Code of Civil Procedure Section 1283, 1961 Cal. Stat. ch.
461, § 2**

1283. On application of a party to the arbitration the neutral arbitrator may order the deposition of a witness to be taken for use as evidence and not for discovery if the witness cannot be compelled to attend the hearing or if such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally at the hearing, to allow the deposition to be taken. The deposition shall be taken in the manner prescribed by law for the taking of depositions in civil actions. If the neutral arbitrator orders the taking of the deposition of a witness who resides outside the State, the party who applied for the taking of the deposition shall obtain a commission therefor from the superior court in accordance with Sections 2024 to 2028, inclusive, of this code.

Former Code of Civil Procedure Sections 2024-2028, 1957 Cal.
Stat. ch. 1904, § 3

2024. The deposition of a witness out of this State may be taken upon a commission issued from the court under the seal of the court, upon an order of the court, or a judge or a justice thereof, on the application of either party, upon five days' previous notice to the other. If the court is a justice court, the commission must have attached to it a certificate of the clerk of the superior court of the county in which such justice court is held, under the seal of such superior court, to the effect that the person issuing the same was an acting judge at the date of commission. If issued to any place within the United States, it may be directed to a person agreed upon by the parties, or if they do not agree, to any notary public, judge or commissioner selected by the court or judge or justice issuing it. If issued to any country out of the United States, it may be directed to a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or to a person appointed by the court in which the action is pending, or to a judge of a court of record in such country, or to any one agreed upon by the parties.

2025. The party moving for the commission under the provisions of Section 2024 of this code must, unless it is waived by the other party, attach to the notice of the motion the interrogatories upon which he desires it to be taken. On the hearing of the motion, the other party must propose such cross-interrogatories as he may desire. If the parties do not agree as to the form of the interrogatories, the court must settle their form, but such agreement or settlement does not preclude either party, when the deposition is offered in evidence, from interposing any objection to any interrogatory which is available to him under the provisions of Sections 2016 and 2021 of this code. The settlement of interrogatories may be had at the time of the hearing of the motion, or at any other time which the court may appoint; but the moving party must, if he request it, be allowed two days within which to propose such redirect interrogatories as the cross-interrogatories proposed render proper. When agreed upon or settled, the interrogatories must be annexed to the commission.

2026. When a party shall desire to take the evidence of a nonresident witness, to be used in any cause pending in this State, the party desiring the same (or where notice shall have been given that a commission to take the testimony of a nonresident witness will be applied for, the opposite party, upon giving the other three days' notice in writing of his election so to do), may have a commission directed in the same manner as provided in Section 2024 of this code to take such evidence, interrogatories to be propounded to the witness orally; upon the taking of which each party may appear before the commissioner, in person or by attorney, and interrogate the witness.

The party desiring such testimony shall give to the other the following notice of the time and place of taking the same, to wit: 10 days, and one day in addition thereto (Sundays included) for every 300 miles' travel from the place of holding the court to the place where such deposition is to be taken.

The provisions of subdivision (g) of Section 2019 shall apply to depositions taken under this section.

2027. The commission must authorize the commissioner to administer an oath to the witness and to take his deposition in answer to the interrogatories, or when the examination is to be without interrogatories, in respect to the question in dispute, and to certify the deposition to the court, in a sealed envelope, directed to the clerk, if there be one, and if not, to the judge thereof, and forwarded to him by mail or other usual channel of conveyance.

2028. A trial or other proceeding must not be postponed by reason of a commission not returned, except upon evidence, satisfactory to the court, that the testimony of the witness is necessary, and that the proper diligence has been used to obtain it.

Former Code of Civil Procedure Section 2034, 1959 Cal. Stat. ch. 1590, § 12

Sec. 12. Section 2034 of said code is amended to read:

2034. (a) If a party or other deponent refuses to answer any question propounded upon examination during the taking of a deposition, the examination shall be completed on other matters or adjourned, as the proponent of the question may prefer. Such proponent, on reasonable notice to all persons affected thereby, may apply to the court in which the action is pending (if the deponent is a party or otherwise subject to the jurisdiction of such court), or if such court does not have jurisdiction over the deponent, to the superior court of the county in which the deposition is taken for an order compelling an answer. Such motion may also be made, without further notice, if the proponent notifies the refusing party or other deponent at the time of such refusal that the proponent will apply to the court for an order pursuant to this subdivision of this section, at a specified time not less than 10 nor more than 30 days from the date of such refusal, in which event the officer before whom the deposition is taken shall direct the refusing party or other deponent to attend a session of said court at said time. Not less than five days prior to the hearing on any such motion, the proponent must lodge with the court the original transcript of such deposition. Upon the refusal of a party to answer any interrogatory submitted under Section 2030 of this code, the proponent of the question may on like notice make like application for such an order. Upon the refusal of a party to admit or deny the genuineness of any documents or the truth of any matters of fact, after having been served with a request under Section 2033 of this code, the party serving such request may on like notice make like application for an order requiring further answers to such request or, in the alternative, for an order that the genuineness of said documents or the truth of said matters of fact be deemed admitted for the purpose of the action. If the motion is granted and if the court finds that the refusal was without substantial justification the court may require the refusing party or deponent and the party or attorney advising the refusal or either of them to pay to the examining party the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees. If the motion is denied and if the court finds that the motion was made without substantial justification, the court may require the examining party or the attorney advising the motion or both of them to pay to the refusing party or witness the amount of the reasonable expenses incurred in opposing the motion including reasonable attorney's fees.

(b) (1) The court may punish as a contempt (i) the refusal of any person to obey a subpoena issued by that court to attend a deposition or to be sworn as a witness, or (ii) the refusal of any person to attend a session of court (either personally or by his attorney) after having been directed to attend in the manner provided in subdivision (a) of this section, or (iii) the refusal of any person to obey any order made by the court under subdivision (a) of this section.

(2) If any party or person for whose immediate benefit the action or proceeding is prosecuted or defended, or an officer, director, superintendent, member, agent, employee or managing agent of any such party or person refuses to obey an order made under subdivision (a) of this section, or if any party or an officer or managing agent of a party refuses to obey an order made under Sections 2019, 2031 or 2032 of this code, the

court may make such orders in regard to the refusal as are just, and among others the following :

(i) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or the physical or mental or blood condition of the person sought to be examined, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order ;

(ii) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents or things or items of testimony, or from introducing evidence of the physical or mental or blood condition of the person sought to be examined ;

(iii) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party ;

(iv) An order requiring the disobedient party or the attorney advising such disobedience to pay to the party obtaining an order under this section the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees.

(v) In lieu of any of the foregoing orders or in addition thereto, an order directing the arrest of any party or agent of a party for disobeying any of such orders except an order to submit to a physical or mental or blood examination ;

(vi) Where a party has failed to comply with an order under subdivision (a) of Section 2032 of this code requiring him to produce another for examination, such orders as are listed in (i), (ii), and (iii) of this subdivision of this section, unless the party failing to comply shows that he is unable to produce such person for examination.

(c) If a party, after being served with a request under Section 2033 of this code to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof and if the party requesting the admissions thereafter proves the genuineness of any such document or the truth of any such matter of fact, he may apply to the court in the same action for an order requiring the other party to pay him the reasonable expenses incurred in making such proof, including reasonable attorney's fees. If the court finds that there were no good reasons for the denial and that the admissions sought were of substantial importance, the order shall be made.

(d) If a party or a person for whose immediate benefit the action or proceeding is prosecuted or defended or anyone who at the time the deposition is set is an officer, director, or managing agent of any such party or person willfully fails to appear before the officer who is to take his deposition, after said party or his attorney has been served with a proper notice in accordance with the provisions of subdivision (a)(4) of Section 2019 of this code, or if a party or an officer or managing agent of a party willfully fails to serve answers to interrogatories submitted under Section 2030 of this code, after proper service of such interrogatories, the court on motion and notice may strike out all or any part of any pleading of that party, or dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party, or impose such other penalties of a lesser nature as the court may deem just, and may order that party or his attorney to pay to the moving party the reasonable expenses in making such motion, including reasonable attorney's fees.

Former Code of Civil Procedure Section 2034, 1974 Cal. Stat. ch. 732, § 4

SEC. 4. Section 2034 of the Code of Civil Procedure is amended to read:

2034. (a) If a party or other deponent refuses or fails to answer any question propounded upon examination during the taking of a deposition, or refuses or fails to produce at a deposition any books, documents or other things under his control pursuant to a subpoena duces tecum, the examination shall be completed on other matters or adjourned, as the proponent of the question may prefer. Such proponent, on notice to all persons affected thereby, may move the court in which the action is pending (if the deponent is a party or otherwise subject to the jurisdiction of such court), or if such court does not have jurisdiction over the deponent, to the superior court of the county in which the deposition is taken for an order compelling an answer or if good cause is shown, the production of such book, document, or other thing. Such motion may also be made, without further notice, if the proponent notifies the refusing party or other deponent at the time of such refusal or failure that the proponent will apply to the court for an order pursuant to this subdivision of this section, at a specified time not less than 10 nor more than 30 days from the date of such refusal or failure, in which event the officer before whom the deposition is taken shall direct the refusing or failing party or other deponent to attend a session of said court at said time. Not less than five days prior to the hearing on any such motion, the proponent must lodge with the court the original transcript of such deposition. Upon the refusal or failure of a party to answer any interrogatory submitted under Section 2030 of this code, the proponent of the question may on like notice make like application for such an order. Upon the refusal or failure of a party to admit or deny the genuineness of any documents or the truth of any matters of fact, after having been served with a request under Section 2033 of this code, the party serving such request may on like notice make like application for an order requiring further answers to such request or, in the alternative, for an order that the genuineness of said documents or the truth of said matters of fact be deemed admitted for the purpose of the action. Upon the refusal or failure of a party to permit inspection or entry after having been served with a request under Section 2031 of this code, the party serving such request may on like notice and upon a showing of good cause make application for an order to compel compliance with the request. If the motion is granted and if the court finds that the refusal or failure was without substantial justification the court may require the refusing or failing party or deponent and the party or attorney advising the refusal or failure or either of them to pay the examining party the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees. If the motion is denied and if the court finds that the motion was made without substantial justification, the court may require the examining party or the attorney advising the motion or both of them to pay to the refusing or failing party or witness the amount of the reasonable expenses incurred in opposing the motion including reasonable attorney's fees.

(b) (1) The court may punish as a contempt (i) the refusal of any person to obey a subpoena issued by that court to attend a deposition or to be sworn as a witness, or (ii) the refusal of any person to attend a session of court (either personally or by his attorney) after having been directed to attend in the manner provided in subdivision (a) of this section, or (iii) the refusal of any person to obey any order made by the court under subdivision (a) of this section.

(2) If any party or person for whose immediate benefit the action or proceeding is prosecuted or defended, or an officer, director, superintendent, member, agent, employee or managing agent of any such party or person refuses to obey an order made under subdivision (a) of this section, or if any party or an officer or managing agent of a party refuses to obey an order made under Sections 2019, 2031 or 2032 of this code, the court may make such orders in regard to the refusal as are just, and among others the following:

(i) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or the physical or mental or blood condition of the person sought to be examined, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(ii) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents or things or items of testimony, or from introducing evidence of the physical or mental or blood condition of the person sought to be examined;

(iii) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(iv) An order requiring the disobedient party or the attorney advising such disobedience to pay to the party obtaining an order under this section the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees;

(v) In lieu of any of the foregoing orders or in addition thereto, an order directing the arrest of any party or agent of a party for disobeying any of such orders except an order to submit to a physical or mental or blood examination;

(vi) Where a party has failed to comply with an order under subdivision (a) of Section 2032 of this code requiring him to produce another for examination, such orders as are listed in (i), (ii), and (iii) of this subdivision of this section, unless the party failing to comply shows that he is unable to produce such person for examination.

(c) If a party, after being served with a request under Section 2033 of this code to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof and if the party requesting the admissions thereafter proves the genuineness of any such document or the truth of any such matter of fact, he may apply to the court in the same action for an order requiring the other party to pay him the reasonable expenses incurred in making such proof, including reasonable attorney's fees. If the court finds that there were no good reasons for the denial and that the admissions sought were of substantial importance, the order shall be made.

(d) If a party or a person for whose immediate benefit the action or proceeding is prosecuted or defended or anyone who at the time the deposition is set is an officer, director, or managing agent of any such party or person willfully fails to appear before the officer who is to take his deposition, after said party or his attorney has been served with a proper notice in accordance with the provisions of subdivision (a) (4) of Section 2019 of this code, or if a party or an officer or managing agent of a party willfully fails to serve answers to interrogatories submitted under Section 2030 of this code, after proper service of such interrogatories, the court on motion and notice may strike out all or any part of any pleading of that party, or dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party, or impose such other penalties of a lesser nature as the court may deem just, and may order that party or his attorney to pay to the moving party the reasonable expenses in making such motion, including reasonable attorney's fees.

Former Code of Civil Procedure Section 2019, 1982 Cal. Stat. ch. 192, § 1

SECTION 1. Section 2019 of the Code of Civil Procedure is amended to read:

2019. (a) (1) A party desiring to take the deposition of any person upon oral examination shall give notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. Such notice must be at least 10 days, adding also one day for every 300 miles of the distance of the place of examination from the residence of the person to whom the notice is given, except that on motion of any party, with or without notice, and for good cause shown, the court may enlarge or shorten the time, or may stay the taking of the deposition until the hearing and determination of a motion for an order pursuant to subdivision (b) of this section. Service of such notice or motion may be made upon any party or his attorney in the manner provided in Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of this code.

(2) Notwithstanding Section 1989 and the distance provisions specified in paragraph (4) of this subdivision, the deposition, whether of a party or any other person, shall be taken only in the county of residence of the deponent or at a place not more than 75 miles from the residence of the deponent or, if the deponent is a party, in the county of place of trial when the place of deposition is less than 150 miles from the residence of the deponent, unless the court, pursuant to paragraph (1) or (2) of subdivision (b) of this section, otherwise orders. If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions.

(3) If an adverse party is in default for not appearing within the time allowed by the law or the court, or if, in a special proceeding, some or all of the parties interested have not appeared, a deposition may be taken without the giving of any notice to the party so in default or not appearing; and in any case on motion of any party, with or without notice, and for good cause shown, the court may authorize the taking of a deposition without the giving of notice to parties who have not been served with summons.

(4) In the case of depositions of a party to the record of any civil action or proceeding or of anyone who at the time of taking the deposition is an officer, director or managing agent of any such party, the service of a subpoena upon any such deponent is not required if proper notice of the taking of such deposition is given to the attorney for such party or to the party, if the party has no attorney. In the case of depositions of a person for whose immediate benefit an action or proceeding is prosecuted or defended or of anyone who at the time of taking the deposition is an officer, director or managing agent of any such person, the service of a subpoena upon any such deponent is not required if proper notice of the taking of such deposition is given to the attorney of the party prosecuting or defending the action or proceeding for the immediate benefit of the deponent or to such party, if the party has no attorney. A notice to take the deposition of a person described in this paragraph cannot require the attendance of such person at a place more than 150 miles from the residence of such person, unless the party desiring to take such deposition first obtains an order pursuant to the provisions of paragraph (2) of subdivision (b) of this section.

(5) In the case of depositions for which the production of books, documents, or other things is required of a party to the record of any civil action or proceeding or person for whose immediate benefit an action or proceeding is prosecuted or defended or anyone who is an officer, director, or managing agent of any such party or person, the service of a subpoena duces tecum and affidavit upon any such person is not required if proper notice is served upon the attorney of such party or person. Such notice shall specify the exact materials or things to be produced.

(6) A party may, in the party's notice or in a subpoena, name as the deponent a public or private corporation or partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent, to testify on its behalf, and may set forth, for each person designated, the matters on which each person will testify in accordance with the demand. A subpoena shall advise a nonparty organization of its duty to make such a designation. The person so designated shall testify as to matters known or reasonably available to the organization. This subdivision does not preclude taking a deposition by any other procedure authorized by law and does not preclude the party, on such terms as are just, from offering evidence by other witnesses regarding the matters specified in the notice or subpoena.

(b) (1) Upon motion seasonably made by any party or by the person to be examined or notified to produce books, documents, or other things and upon notice, or upon the court's own motion and after giving counsel an opportunity to be heard, and in either case for good cause shown, the court in which the action is pending may make an order that the deposition shall not be taken, or that it may be taken only at some designated time or place other than stated in the notice of taking the deposition, or that the deposition may be taken outside the county of residence and at a place more than 75 miles and less than 150 miles from the residence of the deponent in cases not provided for by paragraph (2) of subdivision (a) of this section, or that it shall not be taken except by allowing written interrogatories by one or more parties, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, books, documents, or other things, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed the deposition shall be opened only by order of the court, or that secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court; or the court may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression. In granting or refusing such order the court may impose upon either party or upon the witness the requirement to pay such costs and expenses, including attorney's fees, as the court may deem reasonable.

(2) Notwithstanding Section 1989, the court may, upon motion on 10 days' written notice and for good cause shown, make an order requiring a deponent who is a party to the record of any civil action or proceeding or is a person for whose immediate benefit said action

is prosecuted or defended or is at the time of the taking of the deposition an officer, director or managing agent of any such party or person to attend a deposition at a place more than 150 miles from the residence of such deponent. In granting or refusing such order, the court shall consider whether the moving party selected the forum, whether the deponent will be present at the trial, the convenience of the deponent, the suitability of discovery through a deposition by written interrogatories or other discovery methods, the number of depositions sought under this section, the expense to the parties of requiring the deposition to be taken within 150 miles of the residence of the deponent, the whereabouts of the deponent at the time the deposition is scheduled to be taken, and all other factors tending to show whether or not the interests of justice and the convenience of the parties and witnesses will be served by requiring the deponent to appear for the deposition at a place more than 150 miles from the deponent's residence. Such order may provide that the party desiring to take such deposition shall pay the reasonable expenses incurred by the deponent in attending such deposition and that the party furnish an undertaking approved by the court to secure such payment and may contain such other terms and conditions as are equitable and just.

(c) The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed unless the parties agree otherwise. A party may videotape the deposition if the notice of taking deposition states that the deposition will also be videotaped, or if all parties agree that the deposition will also be videotaped, however, the cost of the videotape portion of the deposition shall not be a recoverable cost. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim.

(d) At any time during the taking of the deposition, on motion of any party or of the deponent, or upon the court's own motion and after giving counsel an opportunity to be heard, and in either case upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the superior court in the county where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in subdivision (b) of this section. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. In granting or refusing such order the court may impose upon either party or upon the witness the requirement to pay such costs or expenses, including attorney's fees, as the court may deem reasonable.

(e) (1) Unless the parties agree on the record to another procedure for reading, correcting, and signing the original of the deposition, when the testimony is fully transcribed the officer shall notify the deponent and counsel in writing that the original of the deposition is available for reading, correcting and signing at the office of the officer, and shall remain so available during business hours of business days for a period of 30 calendar days following such notification. The examination and reading of the transcribed testimony may be waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition. The deponent may correct or approve or refuse to approve the deposition for a period of 30 days following the notification prescribed in this subdivision by means of a letter addressed and mailed or delivered to the transcribing officer indicating any changes to be made, approval, or refusal to approve the deposition. Such changes, approval, or refusal to approve the deposition, when made by letter, shall be equivalent to personal changes, approval, or refusal to approve the deposition.

If the deponent fails to appear at the office of the officer or notify him by letter as provided in this subdivision within such 30-day period, or if the witness so appears or sends such letter but refuses to approve or sign the deposition, the officer shall indicate on the original the fact that the deponent failed to appear, or the fact that the deponent refused to sign together with any reason given therefor. Thereafter the deposition shall have the same force and effect as though it had been read, corrected and signed by the deponent, unless on a motion to suppress under subdivision (d) of Section 2021 of this code the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(2) The stenographic transcript of the deposition prepared by the officer employed by the person noticing the deposition, shall constitute the official record of the deposition for the purpose of trial and any subsequent hearing or appeal. In cases where the deposition was also videotaped, the court may permit the playing of the original videotape or portions thereof for the purpose of the trial or any hearing, other than an appeal, upon a showing of good cause.

(3) The original videotape shall be retained by the operator who recorded the deposition. That operator shall, upon request, provide any party with a copy of the recording upon payment of a reasonable charge.

The operator may discard the videotape after written notice to all parties unless a party promptly objects thereto in writing. The written transcript of the videotaped deposition shall be certified, delivered, and used in the same manner as other transcripts.

(f) (1) The officer shall certify on the deposition and each copy thereof that the witness was duly sworn by such officer and that the deposition is a true record of the testimony given by the witness. Promptly upon the correction, approval, or refusal to approve the deposition, or upon the expiration of 30 calendar days following notification to the witness that the deposition is available for reading, correcting and signing, the officer shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)". Depositions

shall not be filed unless and until their contents become relevant to an issue in the trial or other pending proceedings at which time the court may order that the deposition or a copy thereof certified by the officer, reflecting any changes made by the witness, be filed as part of the record.

(2) The officer taking the deposition shall give prompt notice to all parties of (i) the availability of the deposition for reading, correction, and approval; and (ii) all changes in the deposition made by the witness. Upon request made before the delivery or mailing of the deposition and payment of reasonable charges therefor, the officer shall furnish a certified copy of the deposition to any party to the action or to the deponent.

(3) Unless the parties agree on the record that the party noticing the deposition shall do so, the officer taking the deposition shall keep the deposition for six months following the final disposition of the case. If the officer discontinues his or her occupation of taking depositions, by reason of death or otherwise, the officer or an agent of the officer shall file the deposition with the court.

Whenever a deposition is taken out of this state pursuant to Section 2024, or by stipulation of the parties, the officer before whom the deposition is taken shall, by accepting the commission or undertaking to act pursuant to agreement, be deemed to have consented to be bound by all provisions of this code relating to the reporting, transcribing, certification, copying, signing, refusal to sign or change, sealing, and custody of the deposition, unless otherwise agreed by the parties on the record.

Notwithstanding paragraph (1) of subdivision (f), if the officer before whom such a deposition is taken is not a shorthand reporter having in this state a place of business where the deposition will be kept, the officer shall promptly upon sealing, send the deposition to the clerk of the court in which the action is pending for filing, unless the parties agree on record to the contrary. The clerk shall accept and file the deposition.

A reasonable filing fee, as determined by the Judicial Council, may be charged by the clerk for filing a deposition. In the event a filing fee is charged, the fee shall be paid to the officer at the time the deposition is taken by the party noticing it or by stipulation, and the officer shall pay the fee to the clerk at the time of filing.

(g) (1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay such other party the amount of the reasonable expenses incurred by such other party and such other party's attorney in so attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that other party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by such other party and such other party's attorney in so attending, including reasonable attorney's fees.

(h) The Judicial Council may adopt rules governing the display and presentation of videotaped depositions in court.

**CODE OF CIVIL PROCEDURE SECTION 2025:
ORAL DEPOSITION IN CALIFORNIA**

2025....

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(i) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion 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.

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

- (1) That the deposition not be taken at all.
- (2) That the deposition be taken at a different time.
- (3) That a video recording of the deposition testimony of a treating or consulting physician or of any expert witness, intended for possible use at trial under paragraph (4) of subdivision (u), be postponed until the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent, or other means, for cross-examination.
- (4) That the deposition be taken at a place other than that specified in the deposition notice, if it is within a distance permitted by subdivision (e).
- (5) That the deposition be taken only on certain specified terms and conditions.
- (6) That the deponent's testimony be taken by written, instead of oral, examination.
- (7) That the method of discovery be interrogatories to a party instead of an oral deposition.
- (8) That the testimony be recorded in a manner different from that specified in the deposition notice.
- (9) That certain matters not be inquired into.
- (10) That the scope of the examination be limited to certain matters.
- (11) That all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, or copied.
- (12) That designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition.
- (13) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only to specified persons or only in a specified way.
- (14) That the parties simultaneously file specified documents enclosed in sealed envelopes to be opened as directed by the court.

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

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

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, 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.

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