

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

Civil Discovery: Nonsubstantive Reform

February 2003

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

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN **June 30, 2003.**

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

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SUMMARY OF TENTATIVE RECOMMENDATION

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

This recommendation was prepared pursuant to Resolution Chapter 166 of the Statutes of 2002.

CIVIL DISCOVERY: NONSUBSTANTIVE REFORM

1 The statutes governing civil discovery¹ are logically organized, but are difficult
2 to use due to their length and complexity.² The Law Revision Commission
3 recommends a nonsubstantive reorganization of the civil discovery provisions,
4 keeping the existing statutory language but dividing the statutes into short sections
5 grouped in chapters according to subject matter.³

6 **Advantages of Reorganization**

7 The reorganization will enhance readability for courts and practitioners, and
8 assist them in interpreting and following the law. Breaking the statute into shorter,
9 more comprehensible segments will enable a person to readily locate pertinent
10 provisions by using a table of contents, rather than having to comb through
11 lengthy sections containing much irrelevant material. A court or practitioner can
12 also refer to key language by section or subdivision, instead of by a circumlocution
13 such as “the first sentence of the first paragraph of Section 2032(h).” This will
14 facilitate efficient and effective advocacy and decision-making.

15 The reorganization offers a number of other advantages:

- 16 (1) It will simplify the legislative process for amending the statute in the future.
17 Under existing law, a bill to amend a provision of the discovery statute is
18 lengthy even if it proposes only a minor revision.⁴ This makes the
19 legislative process more burdensome than it would be if the bill were short.⁵

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

2. Most of the key sections are extremely long, making it difficult to locate and refer to pertinent material. For example, Section 2025 consists of subdivisions (a)-(v), most of which are divided into multiple paragraphs. See also Sections 2020, 2030, 2031, 2032, 2033, 2034.

3. The Commission is also studying possible substantive reforms of the civil discovery provisions. The Commission may propose one or more such reforms at a later time.

4. Lengthy bills would be necessary, for example, to correct the spelling of “meritorious” in Section 2023(a)(5); to eliminate the apparently accidental inclusion of “and the identity of the requesting party, the set number,” in Section 2033(c)(4); and to replace “specific action proceeding” with “specific action or proceeding” in the fourth sentence of Section 2025(h)(3).

5. The full text of a section must be set forth in any bill amending the section. Joint Rule 10. A lengthy bill entails higher printing costs than a short one. It also takes longer to review. Much of the material may be unrelated to a proposed reform, wasting reviewers’ time and potentially injecting additional issues into a simple proposal.

Further, the likelihood that two bills will be introduced to amend the same section is greater if a section is long and covers multiple topics than if a section is short and limited to a single topic. If two bills affect the same section and both are enacted, the bill that is signed last prevails over the other bill, rendering it a nullity. Gov’t Code § 9605. This can be avoided by double-jointing the bills or including other language to address the conflict. *Id.* Taking such steps entails expense and effort, however, and introduces new possibilities for errors.

A recent bill to amend Section 2025 (AB 421 (Wayne)) provides a good illustration of these problems. As amended on January 28, 2002, the bill was 22 pages long, but it would only have added three words to one sentence of Section 2025, deleted the next sentence, and replaced it with a new sentence. On August

- 1 (2) It will lead to better legislation, because it facilitates insertion of new
2 statutory material.⁶
- 3 (3) It will conform the discovery statute to modern drafting techniques adopted
4 by the California Code Commission,⁷ the Legislature,⁸ Legislative
5 Counsel,⁹ and the Law Revision Commission.¹⁰

6 **Methodology of the Proposed Reform**

7 To minimize disruption to courts and practitioners, the proposed legislation
8 would closely track existing law. The existing article on civil discovery in the
9 Code of Civil Procedure would be recast as a title. In general, each section of that
10 article would become a chapter, with its subdivisions becoming individual
11 sections.

12 Each chapter would retain the same base number as the section from which it
13 derived. For example, the substance of existing Section 2028 (deposition by
14 written questions) would be divided into Sections 2028.010, 2028.020, 2028.030,
15 etc., which would be grouped into a chapter entitled “Deposition By Written
16 Questions.”

22, 2002, the bill was double-jointed to eliminate a conflict with another bill amending Section 2025. As double-jointed, the bill was 43 pages long, but its enactment would only have affected two sentences of Section 2025.

6. The Legislature can readily add new language where logically appropriate, unhampered by constraints such as overlong paragraphs and lack of available subparts. This promotes clear and straightforward drafting, as opposed to confusing and convoluted provisions. For an example of the latter, see the first sentence of the first paragraph of Section 2034(i)(2), which reads:

A party desiring to depose any expert witness, other than a party or employee of a party, who is either (A) an expert described in paragraph (2) of subdivision (a) except one who is a party or an employee of a party, (B) a treating physician and surgeon or other treating health care practitioner who is to be asked during the deposition to express opinion testimony, including opinion or factual testimony regarding the past or present diagnosis or prognosis made by the practitioner or the reasons for a particular treatment decision made by the practitioner, but not including testimony requiring only the reading of words and symbols contained in the relevant medical record or, if those words and symbols are not legible to the deponent, the approximation by the deponent of what those words or symbols are, or (C) an architect, professional engineer, or licensed land surveyor, who was involved with the original project design or survey for which he or she is asked to express an opinion within his or her expertise and relevant to the action or proceeding, shall pay the expert’s reasonable and customary hourly or daily fee for any time spent at the deposition from the time noticed in the deposition subpoena or from the time of the arrival of the expert witness should that time be later than the time noticed in the deposition subpoena, until the time the expert witness is dismissed from the deposition, whether or not the expert is actually deposed by any party attending the deposition.

7. California Code Commission, *Drafting Rules and Principles for Use of California Code Commission Draftsmen*, 1947-48 Report, app. G, at 4.

8. Joint Rule 8.

9. Legislative Counsel of California, *Legislative Drafting Manual* 26-28 (1975).

10. Commission Staff Memorandum 76-24 (Feb. 17, 1976); Commission Staff Memorandum 85-64 (May 31, 1985).

1 The proposed legislation would generally use the same wording as in the
2 existing provisions. Some revisions would be made to eliminate redundancies.¹¹
3 Other revisions would be made to improve grammar or clarity, correct mistakes,
4 conform cross-references, and comply with current drafting conventions.

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

11. For example, the legislation would eliminate repetitive language regarding the requirement of a “declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue.” See proposed Section 2016.040 & Comment.

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PROPOSED LEGISLATION

1 ☞ **Note.** This draft incorporates legislation enacted in 2002. If legislation affecting pertinent
2 provisions is enacted in 2003, the Commission will revise the proposal accordingly.

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

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

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

8 ☞ **Note.** To conserve resources, the text of the repealed sections has not been reproduced. For
9 the disposition of the repealed sections, see “Disposition of Existing Law” *infra*.

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

11 SEC. _____. Title 4 (commencing with Section 2016.010) is added to Part 4 of the
12 Code of Civil Procedure, to read:

13 TITLE 4. CIVIL DISCOVERY ACT

14 CHAPTER 1. GENERAL PROVISIONS

15 § 2016.010. Short title

16 2016.010. This title may be cited as the “Civil Discovery Act.”

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

18 § 2016.020. Definitions

19 2016.020. As used in this title:

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

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

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

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

26 § 2016.030. Written stipulations regarding depositions and other discovery

27 2016.030. Unless the court orders otherwise, the parties may by written
28 stipulation do either or both of the following:

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

32 (b) Modify the procedures provided by this title for other methods of discovery.

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

1 ☞ **Note.** Proposed Section 2016.030 would closely track the language of Section 2021, which
2 separately addresses depositions and “other methods of discovery.” A simpler alternative would
3 be the following:

4 2016.030. Unless the court orders otherwise, the parties may by written stipulation modify
5 the procedures provided by this title for any method of discovery permitted under Section
6 2019.010.

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

8 The Commission solicits comments on which approach is preferable.

9 **§ 2016.040. Meet and confer declaration**

10 2016.040. A meet and confer declaration in support of a motion shall state facts
11 showing a reasonable and good faith attempt at an informal resolution of each
12 issue presented by the motion.

13 **Comment.** Section 2016.040 is added for drafting convenience. The language is drawn from
14 numerous provisions. See former Sections 2017(c)-(d), 2019(b), 2024(e), 2025(e), (g), (i), (j), (n),
15 (o), (q), 2028(d), 2030(e), (l), (m), 2031(f), (m), 2032(c), (d), (h), (j), 2033(e), (l), 2034(e), (i),
16 (k), (l). To eliminate redundancy, these have been revised to refer to Section 2016.040. See
17 Sections 2017.020(a), 2017.220(a), 2019.030(b), 2024.050(a), 2025.260(a), 2025.410(c),
18 2025.420(a), 2025.450(b)(2), 2025.480(b), 2025.520(g), 2025.530(e), 2028.040(b), 2028.050(b),
19 2030.090(a), 2030.300(b), 2030.310(b), 2031.060(a), 2031.310(b), 2032.250(a), 2032.310(b),
20 2032.620(a), 2032.650(a), 2033.080(a), 2033.290(b), 2034.250(a), 2034.470(b), 2034.610(c),
21 2034.710(c).

22 ☞ **Note.** Twenty-nine provisions in the Civil Discovery Act require that a sanctions motion “be
23 accompanied by a declaration stating facts showing a reasonable and good faith attempt at an
24 informal resolution of each issue presented by the motion,” or include very similar language.
25 Proposed Section 2016.040 is intended to streamline the drafting of these provisions. The
26 Commission solicits comments on this approach.

27 **§ 2016.050. Service by mail**

28 2016.050. Section 1013 applies to any method of discovery or service of a
29 motion for discovery provided for in this title.

30 **Comment.** Section 2016.050 continues former Section 2019(e) without change, except to
31 replace “article” with “title.”

32 ☞ **Note.** Proposed Section 2016.050 closely tracks the language of Section 2019(e), which refers
33 to service of a motion for discovery, but not to service of a motion for a protective order. It might
34 be appropriate to broaden the language to clearly encompass a motion for a protective order:

35 2016.050. Section 1013 applies to any method of discovery or service of a motion provided
36 for in this title.

37 **Comment.** Section 2016.050 continues former Section 2019(e) but broadens the language
38 to clearly encompass a motion for a protective order, as well as a motion for discovery.

39 The Commission solicits comments on this alternative approach.

40 **§ 2016.060. Computation of time when last day falls on Saturday, Sunday, or holiday**

41 2016.060. When the last day to perform or complete any act provided for in this
42 title falls on a Saturday, Sunday, or holiday as specified in Section 10, the time
43 limit is extended until the next day that is not a Saturday, Sunday, or holiday.

1 Article 2. Scope of Discovery in Specific Contexts

2 § 2017.210. Discovery of insurance coverage

3 2017.210. A party may obtain discovery of the existence and contents of any
4 agreement under which any insurance carrier may be liable to satisfy in whole or
5 in part a judgment that may be entered in the action or to indemnify or reimburse
6 for payments made to satisfy the judgment. This discovery may include the
7 identity of the carrier and the nature and limits of the coverage. A party may also
8 obtain discovery as to whether that insurance carrier is disputing the agreement's
9 coverage of the claim involved in the action, but not as to the nature and substance
10 of that dispute. Information concerning the insurance agreement is not by reason
11 of disclosure admissible in evidence at trial.

12 **Comment.** Section 2017.210 continues former Section 2017(b) without change.

13 § 2017.220. Discovery concerning plaintiff's sexual conduct

14 2017.220. (a) In any civil action alleging conduct that constitutes sexual
15 harassment, sexual assault, or sexual battery, any party seeking discovery
16 concerning the plaintiff's sexual conduct with individuals other than the alleged
17 perpetrator shall establish specific facts showing that there is good cause for that
18 discovery, and that the matter sought to be discovered is relevant to the subject
19 matter of the action and reasonably calculated to lead to the discovery of
20 admissible evidence. This showing shall be made by a noticed motion,
21 accompanied by a meet and confer declaration under Section 2016.040, and shall
22 not be made or considered by the court at an ex parte hearing.

23 (b) The court shall impose a monetary sanction under Chapter 7 (commencing
24 with Section 2023.010) against any party, person, or attorney who unsuccessfully
25 makes or opposes a motion for discovery, unless it finds that the one subject to the
26 sanction acted with substantial justification or that other circumstances make the
27 imposition of the sanction unjust.

28 **Comment.** Subdivision (a) of Section 2017.220 continues the first paragraph of former Section
29 2017(d) without substantive change.

30 Subdivision (b) continues the second paragraph of former Section 2017(d) without change,
31 except to conform the cross-reference.

32 ☞ **Note.** The second paragraph of Section 2017(d) states: "The court shall impose a monetary
33 sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or
34 opposes *a motion for discovery*, unless it finds that the one subject to the sanction acted with
35 substantial justification or that other circumstances make the imposition of the sanction unjust."
36 (Emphasis added.) From this language, it is unclear whether the provision is meant to apply to
37 any discovery motion, or only to a motion seeking discovery concerning the plaintiff's sexual
38 conduct with individuals other than the alleged perpetrator. The Commission presumes the latter,
39 because otherwise language in other discovery provisions would be surplusage. That could be
40 made more clear by revising proposed Section 2017.220(b) as shown in italics:

41 (b) The court shall impose a monetary sanction under Chapter 7 (commencing with Section
42 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a
43 motion for discovery *under subdivision (a)*, unless it finds that the one subject to the sanction

1 acted with substantial justification or that other circumstances make the imposition of the
2 sanction unjust.

3 **Comment. ...**

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

6 The Commission solicits comments on this approach.

7 CHAPTER. 3. USE OF TECHNOLOGY IN CONDUCTING
8 DISCOVERY IN A COMPLEX CASE

9 **§ 2017.510. “Technology” defined**

10 2017.510. Subject to the findings required by Section 2017.530 and the purpose
11 of permitting and encouraging cost-effective and efficient discovery,
12 “technology,” as used in this chapter, includes, but is not limited to, telephone,
13 e-mail, CD-ROM, Internet web sites, electronic documents, electronic document
14 depositories, Internet depositions and storage, videoconferencing, and other
15 electronic technology that may be used to improve communication and the
16 discovery process.

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

18 **§ 2017.520. Effect of chapter**

19 2017.520. (a) Nothing in this chapter diminishes the rights and duties of the
20 parties regarding discovery, privileges, procedural rights, or substantive law.

21 (b) Nothing in this chapter modifies the requirement for use of a stenographic
22 court reporter as provided in Section 2025.330. The rules, standards, and
23 guidelines adopted pursuant to this chapter shall be consistent with the
24 requirement of Section 2025.330 that deposition testimony be taken
25 stenographically unless the parties agree or the court orders otherwise.

26 (c) Nothing in this chapter modifies or affects in any way the process used for
27 the selection of a stenographic court reporter.

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

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

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

32 **§ 2017.530. Use of technology in conducting discovery in complex case**

33 2017.530. (a) Pursuant to a noticed motion, a court may enter an order
34 authorizing the use of technology in conducting discovery in any of the following:

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

37 (2) A case ordered to be coordinated under Chapter 3 (commencing with Section
38 404) of Title 4 of Part 2.

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

4 (4) A case assigned to Plan 3 under paragraph (3) of subdivision (b) of Section
5 2105 of the California Rules of Court.

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

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

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

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

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

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

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

20 (d) Pursuant to an order authorizing the use of technology in conducting
21 discovery, discovery may be conducted and maintained in electronic media and by
22 electronic communication. The court may enter orders prescribing procedures
23 relating to the use of electronic technology in conducting discovery, including
24 orders for service of discovery requests and responses, service and presentation of
25 motions, conduct of discovery in electronic media, and production, storage, and
26 access to information in electronic form.

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

30 **Comment.** Subdivision (a) of Section 2017.530 continues the first sentence of former Section
31 2017(e)(1) without substantive change.

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

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

35 Subdivision (d) continues the first and second sentences of former Section 2017(e)(3) without
36 substantive change.

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

39 **§ 2017.540. Use of service provider**

40 2017.540. (a) If a service provider is to be used and compensated by the parties
41 in discovery under this chapter, the court shall appoint the person or organization
42 agreed on by the parties and approve the contract agreed on by the parties and the
43 service provider. If the parties do not agree on selection of a service provider, each

1 party shall submit to the court up to three nominees for appointment, together with
2 a contract acceptable to the nominee. The court shall appoint a service provider
3 from among the nominees. The court may condition this appointment on the
4 acceptance of modifications in the terms of the contract. If no nominations are
5 received from any of the parties, the court shall appoint one or more service
6 providers.

7 (b) Pursuant to a noticed motion at any time and on a showing of good cause, the
8 court may order the removal of the service provider or vacate any agreement
9 between the parties and the service provider, or both, effective as of the date of the
10 order. The continued service of the service provider shall be subject to review
11 periodically, as agreed by the parties and the service provider, or annually if they
12 do not agree. Any disputes involving the contract or the duties, rights, and
13 obligations of the parties or the service provider may be determined on a noticed
14 motion in the action.

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

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

19 CHAPTER 4. ATTORNEY WORK PRODUCT

20 § 2018.010. “Client” defined

21 2018.010. For purposes of this chapter, “client” means a “client” as defined in
22 Section 951 of the Evidence Code.

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

25 § 2018.020. Policy underlying work product privilege

26 2018.020. It is the policy of the state to do both of the following:

27 (a) Preserve the rights of attorneys to prepare cases for trial with that degree of
28 privacy necessary to encourage them to prepare their cases thoroughly and to
29 investigate not only the favorable but the unfavorable aspects of those cases.

30 (b) Prevent attorneys from taking undue advantage of their adversary’s industry
31 and efforts.

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

33 § 2018.030. Discovery of attorney work product

34 2018.030. (a) A writing that reflects an attorney’s impressions, conclusions,
35 opinions, or legal research or theories is not discoverable under any circumstances.

36 (b) The work product of an attorney, other than a writing described in
37 subdivision (a), is not discoverable unless the court determines that denial of
38 discovery will unfairly prejudice the party seeking discovery in preparing that
39 party’s claim or defense or will result in an injustice.

1 **Comment.** Subdivision (a) of Section 2018.030 continues former Section 2018(c) without
2 substantive change.

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

4 **§ 2018.040. Effect of chapter**

5 2018.040. This chapter is intended to be a restatement of existing law relating to
6 protection of work product. It is not intended to expand or reduce the extent to
7 which work product is discoverable under existing law in any action.

8 **Comment.** Section 2018.040 continues the first and second sentences of former Section
9 2018(d) without change, except to replace “section” with “chapter.”

10 **§ 2018.050. Lawyer suspected of knowingly participating in crime or fraud**

11 2018.050. Notwithstanding Section 2018.040, when a lawyer is suspected of
12 knowingly participating in a crime or fraud, there is no protection of work product
13 under this chapter in any official investigation by a law enforcement agency or
14 proceeding or action brought by a public prosecutor in the name of the People of
15 the State of California if the services of the lawyer were sought or obtained to
16 enable or aid anyone to commit or plan to commit a crime or fraud.

17 **Comment.** Section 2018.050 continues the third sentence of former Section 2018(d) without
18 substantive change.

19 ☞ **Note.** Proposed Section 2018.050 incorporates revisions of Section 2018(d) enacted by
20 urgency legislation in 2002. See AB 2055 (Robert Pacheco), 2002 Cal. Stat. ch. 1059, § 1.

21 **§ 2018.060. In camera hearing**

22 2018.060. Nothing in this chapter is intended to limit an attorney’s ability to
23 request an in camera hearing as provided for in *People v. Superior Court (Laff)*
24 (2001) 25 Cal.4th 703.

25 **Comment.** Section 2018.060 continues the fourth sentence of former Section 2018(d) without
26 change, except to replace “section” with “chapter.”

27 ☞ **Note.** Proposed Section 2018.060 incorporates revisions of Section 2018(d) enacted by
28 urgency legislation in 2002. See AB 2055 (Robert Pacheco), 2002 Cal. Stat. ch. 1059, § 1.

29 **§ 2018.070. Discovery of attorney work product by State Bar**

30 2018.070. (a) The State Bar may discover the work product of an attorney
31 against whom disciplinary charges are pending when it is relevant to issues of
32 breach of duty by the lawyer and requisite client approval has been granted.

33 (b) Where requested and for good cause, discovery under this section shall be
34 subject to a protective order to ensure the confidentiality of the work product
35 except for its use by the State Bar in disciplinary investigations and its
36 consideration under seal in State Bar Court proceedings.

37 (c) For purposes of this chapter, whenever a client has initiated a complaint
38 against an attorney, the requisite client approval shall be deemed to have been
39 granted.

1 **§ 2019.030. Restriction on use of discovery methods**

2 2019.030. (a) The court shall restrict the frequency or extent of use of a
3 discovery method provided in Section 2019.010 if it determines either of the
4 following:

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

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

11 (b) The court may make these determinations pursuant to a motion for a
12 protective order by a party or other affected person. This motion shall be
13 accompanied by a meet and confer declaration under Section 2016.040.

14 (c) The court shall impose a monetary sanction under Chapter 7 (commencing
15 with Section 2023.010) against any party, person, or attorney who unsuccessfully
16 makes or opposes a motion for a protective order, unless it finds that the one
17 subject to the sanction acted with substantial justification or that other
18 circumstances make the imposition of the sanction unjust.

19 **Comment.** The introductory clause of subdivision (a) of Section 2019.030 continues the
20 introductory clause of former Section 2019(b) without substantive change. Subdivision (a)(1)
21 continues former Section 2019(b)(1) without change. Subdivision (a)(2) continues former Section
22 2019(b)(2) without change.

23 Subdivision (b) continues the next-to-last paragraph of former Section 2019(b) without
24 substantive change.

25 Subdivision (c) continues the last paragraph of former Section 2019(b) without change, except
26 to conform the cross-reference.

27 **Article 2. Methods and Sequence of Discovery in Specific Contexts**

28 **§ 2019.510. Timing of discovery relating to trade secret**

29 2019.510. In any action alleging the misappropriation of a trade secret under the
30 Uniform Trade Secrets Act (Title 5 (commencing with Section 3426) of Part 1 of
31 Division 4 of the Civil Code), before commencing discovery relating to the trade
32 secret, the party alleging the misappropriation shall identify the trade secret with
33 reasonable particularity subject to any orders that may be appropriate under
34 Section 3426.5 of the Civil Code.

35 **Comment.** Section 2019.510 continues former Section 2019(d) without change.

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CHAPTER 6. NONPARTY DISCOVERY

Article 1. General Provisions

§ 2020.010. Method and process for obtaining discovery from nonparty

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

- (1) An oral deposition under Chapter 9 (commencing with Section 2025.010).
- (2) A written deposition under Chapter 11 (commencing with Section 2028.010).
- (3) A deposition for production of business records and things under Article 4 (commencing with Section 2020.410) or Article 5 (commencing with Section 2020.510).

(b) Except as provided in subdivision (a) of Section 2025.280, the process by which a nonparty is required to provide discovery is a deposition subpoena.

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

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

§ 2020.020. Types of deposition subpoenas

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

- (a) Only the attendance and the testimony of the deponent, under Article 3 (commencing with Section 2020.310).
- (b) Only the production of business records for copying, under Article 4 (commencing with Section 2020.410).
- (c) The attendance and the testimony of the deponent, as well as the production of business records, other documents, and tangible things, under Article 5 (commencing with Section 2020.510).

Comment. Section 2020.020 continues the third sentence (including items (1)-(3)) of former Section 2020(a) without substantive change.

§ 2020.030. Application of other code provisions

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

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

1 Article 2. Procedures Applicable to All Types of Deposition
2 Subpoenas

3 **§ 2020.210. Issuance of deposition subpoena**

4 2020.210. (a) The clerk of the court in which the action is pending shall issue a
5 deposition subpoena signed and sealed, but otherwise in blank, to a party
6 requesting it, who shall fill it in before service.

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

11 **Comment.** Subdivision (a) of Section 2020.210 continues the first sentence of former Section
12 2020(b) without substantive change.

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

15 **§ 2020.220. Service of deposition subpoena**

16 2020.220. (a) Subject to subdivision (c) of Section 2020.410, service of a
17 deposition subpoena shall be effected a sufficient time in advance of the deposition
18 to provide the deponent a reasonable opportunity to locate and produce any
19 designated business records, documents, and tangible things, as described in
20 Article 4 (commencing with Section 2020.410), and, where personal attendance is
21 commanded, a reasonable time to travel to the place of deposition.

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

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

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

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

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

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

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

36 **Comment.** Subdivision (a) of Section 2020.220 continues the first sentence of former Section
37 2020(f) without change, except to conform the cross-references.

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

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

1 (c) If the deposition will be recorded using audio or video technology by, or at
2 the direction of, the noticing party under Section 2025.340, the subpoena shall
3 state that it will be recorded in that manner.

4 (d) If the deposition testimony will be conducted using instant visual display, the
5 subpoena shall state that it will be conducted in that manner.

6 (e) If the deponent is an organization, the subpoena shall describe with
7 reasonable particularity the matters on which examination is requested. The
8 subpoena shall also advise the organization of its duty to make the designation of
9 employees or agents who will attend the deposition, as described in Section
10 2025.230.

11 **Comment.** Section 2020.310 continues former Section 2020(c) without substantive change.

12 ☞ **Note.** Subdivisions (c) and (d) of proposed Section 2020.310 incorporate revisions of Section
13 2020(c) enacted in 2002. See AB 2842 (Harman), 2002 Cal. Stat. ch. 1068, § 1.

14 Article 4. Subpoena Commanding Only Production of 15 Business Records for Copying

16 § 2020.410. Subpoena commanding only production of business records for copying

17 2020.410. (a) A deposition subpoena that commands only the production of
18 business records for copying shall designate the business records to be produced
19 either by specifically describing each individual item or by reasonably
20 particularizing each category of item.

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

24 (c) A deposition subpoena that commands only the production of business
25 records for copying need not be accompanied by an affidavit or declaration
26 showing good cause for the production of the business records designated in it. It
27 shall be directed to the custodian of those records or another person qualified to
28 certify the records. It shall command compliance in accordance with Section
29 2020.430 on a date that is no earlier than 20 days after the issuance, or 15 days
30 after the service, of the deposition subpoena, whichever date is later.

31 (d) If, under Section 1985.3 or 1985.6, the one to whom the deposition subpoena
32 is directed is a witness, and the business records described in the deposition
33 subpoena are personal records pertaining to a consumer, the service of the
34 deposition subpoena shall be accompanied either by a copy of the proof of service
35 of the notice to the consumer described in subdivision (e) of Section 1985.3, or
36 subdivision (b) of Section 1985.6, as applicable, or by the consumer's written
37 authorization to release personal records described in paragraph (2) of subdivision
38 (c) of Section 1985.3, or paragraph (2) of subdivision (c) of Section 1985.6, as
39 applicable.

40 **Comment.** Subdivisions (a) and (b) of Section 2020.410 continue the first sentence of former
41 Section 2020(d)(1) without substantive change.

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

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

4 **§ 2020.420. Officer for deposition seeking only production of business records**

5 2020.420. The officer for a deposition seeking discovery only of business
6 records for copying under this article shall be a professional photocopier registered
7 under Chapter 20 (commencing with Section 22450) of Division 8 of the Business
8 and Professions Code, or a person exempted from the registration requirements of
9 that chapter under Section 22451 of the Business and Professions Code. This
10 deposition officer shall not be financially interested in the action, or a relative or
11 employee of any attorney of the parties. Any objection to the qualifications of the
12 deposition officer is waived unless made before the date of production or as soon
13 thereafter as the ground for that objection becomes known or could be discovered
14 by reasonable diligence.

15 **Comment.** Section 2020.420 continues former Section 2020(d)(3) without change, except to
16 replace “subdivision” with “article.”

17 **§ 2020.430. Compliance with subpoena commanding only production of business records**

18 2020.430. (a) Except as provided in subdivision (e), if a deposition subpoena
19 commands only the production of business records for copying, the custodian of
20 the records or other qualified person shall, in person, by messenger, or by mail,
21 deliver both of the following only to the deposition officer specified in the
22 subpoena:

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

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

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

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

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

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

40 (d) Unless the parties, and if the records are those of a consumer as defined in
41 Section 1985.3 or 1985.6, the consumer, stipulate to an earlier date, the custodian
42 of the records shall not deliver to the deposition officer the records that are the

1 subject of the deposition subpoena prior to the date and time specified in the
2 deposition subpoena. The following legend shall appear in boldface type on the
3 deposition subpoena immediately following the date and time specified for
4 production: “Do not release the requested records to the deposition officer prior to
5 the date and time stated above.”

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

10 (f) The provisions of Section 1562 of the Evidence Code concerning the
11 admissibility of the affidavit of the custodian or other qualified person apply to a
12 deposition subpoena served under this article.

13 **Comment.** Subdivisions (a) and (e) of Section 2020.430 continue the first sentence of former
14 Section 2020(d)(4) without substantive change.

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

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

19 Subdivision (d) continues the fifth and sixth sentences of former Section 2020(d)(4) without
20 change.

21 Subdivision (f) continues former Section 2020(d)(6) without change, except to replace
22 “subdivision” with “article.”

23 **§ 2020.440. Duties of deposition officer**

24 2020.440. Promptly on or after the deposition date and after the receipt or the
25 making of a copy of business records under this article, the deposition officer shall
26 provide that copy to the party at whose instance the deposition subpoena was
27 served, and a copy of those records to any other party to the action who then or
28 subsequently, within a period of six months following the settlement of the case,
29 notifies the deposition officer that the party desires to purchase a copy of those
30 records.

31 **Comment.** Section 2020.440 continues former Section 2020(d)(5) without change, except to
32 replace “subdivision” with “article.”

33 **Article 5. Subpoena Commanding Both Production of Business**
34 **Records and Attendance and Testimony of the Deponent**

35 **§ 2020.510. Subpoena commanding both production of business records and attendance and**
36 **testimony of deponent**

37 2020.510. (a) A deposition subpoena that commands the attendance and the
38 testimony of the deponent, as well as the production of business records,
39 documents, and tangible things, shall:

40 (1) Comply with the requirements of Section 2020.310.

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

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

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

8 (c) Where, as described in Section 1985.3, the person to whom the deposition
9 subpoena is directed is a witness, and the business records described in the
10 deposition subpoena are personal records pertaining to a consumer, the service of
11 the deposition subpoena shall be accompanied either by a copy of the proof of
12 service of the notice to the consumer described in subdivision (e) of Section
13 1985.3, or by the consumer's written authorization to release personal records
14 described in paragraph (2) of subdivision (c) of Section 1985.3.

15 **Comment.** Subdivision (a) of Section 2020.510 continues the first sentence of former Section
16 2020(e) without substantive change.

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

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

20 CHAPTER 7. SANCTIONS

21 § 2023.010. Misuses of discovery process

22 2023.010. Misuses of the discovery process include, but are not limited to, the
23 following:

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

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

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

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

33 (e) Making, without substantial justification, an unmeritorious objection to
34 discovery.

35 (f) Making an evasive response to discovery.

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

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

39 (i) Failing to confer in person, by telephone, or by letter with an opposing party
40 or attorney in a reasonable and good faith attempt to resolve informally any
41 dispute concerning discovery, if the section governing a particular discovery

1 motion requires the filing of a declaration stating facts showing that an attempt at
2 informal resolution has been made.

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

5 **§ 2023.020. Sanctions for failure to confer as required**

6 2023.020. Notwithstanding the outcome of the particular discovery motion, the
7 court shall impose a monetary sanction ordering that any party or attorney who
8 fails to confer as required pay the reasonable expenses, including attorney's fees,
9 incurred by anyone as a result of that conduct.

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

12 **§ 2023.030. Other sanctions for misuse of discovery**

13 2023.030. To the extent authorized by the chapter governing any particular
14 discovery method or any other provision of this title, the court, after notice to any
15 affected party, person, or attorney, and after opportunity for hearing, may impose
16 the following sanctions against anyone engaging in conduct that is a misuse of the
17 discovery process:

18 (a) The court may impose a monetary sanction ordering that one engaging in the
19 misuse of the discovery process, or any attorney advising that conduct, or both pay
20 the reasonable expenses, including attorney's fees, incurred by anyone as a result
21 of that conduct. The court may also impose this sanction on one unsuccessfully
22 asserting that another has engaged in the misuse of the discovery process, or on
23 any attorney who advised that assertion, or on both. If a monetary sanction is
24 authorized by any provision of this title, the court shall impose that sanction unless
25 it finds that the one subject to the sanction acted with substantial justification or
26 that other circumstances make the imposition of the sanction unjust.

27 (b) The court may impose an issue sanction ordering that designated facts shall
28 be taken as established in the action in accordance with the claim of the party
29 adversely affected by the misuse of the discovery process. The court may also
30 impose an issue sanction by an order prohibiting any party engaging in the misuse
31 of the discovery process from supporting or opposing designated claims or
32 defenses.

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

36 (d) The court may impose a terminating sanction by one of the following orders:

37 (1) An order striking out the pleadings or parts of the pleadings of any party
38 engaging in the misuse of the discovery process.

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

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

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

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

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

6 Subdivision (a) continues former Section 2023(b)(1) without change, except to replace “article”
7 with “title.”

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

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

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

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

12 **§ 2023.040. Content of request for sanction**

13 2023.040. A request for a sanction shall, in the notice of motion, identify every
14 person, party, and attorney against whom the sanction is sought, and specify the
15 type of sanction sought. The notice of motion shall be supported by a
16 memorandum of points and authorities, and accompanied by a declaration setting
17 forth facts supporting the amount of any monetary sanction sought.

18 **Comment.** Section 2023.040 continues former Section 2023(c) without change.

19 **CHAPTER 8. TIME FOR COMPLETION OF DISCOVERY**

20 **§ 2024.010. Completion of discovery**

21 2024.010. As used in this chapter, discovery is considered completed on the day
22 a response is due or on the day a deposition begins.

23 **Comment.** Section 2024.010 continues the third sentence of former Section 2024(a) without
24 change, except to replace “section” with “chapter.”

25 **§ 2024.020. Discovery cutoff**

26 2024.020. (a) Except as otherwise provided in this chapter, any party shall be
27 entitled as a matter of right to complete discovery proceedings on or before the
28 30th day, and to have motions concerning discovery heard on or before the 15th
29 day, before the date initially set for the trial of the action.

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

32 **Comment.** Subdivision (a) of Section 2024.020 continues the first sentence of former Section
33 2024(a) without change, except to replace “section” with “chapter.” For computation of the
34 discovery cutoff when the last day falls on a Saturday, Sunday, or holiday, see Section 2016.060.

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

37 **Note.** Section 2024(a) provides:

38 2024. (a) Except as otherwise provided in this section, any party shall be entitled as a
39 matter of right to complete discovery proceedings on or before the 30th day, and to have
40 motions concerning discovery heard on or before the 15th day, before the date initially set for

1 the trial of the action. *If either of these dates falls on a Saturday, Sunday, or holiday as*
2 *specified in Section 10, the last day shall be the next successive court day...*

3 (Emphasis added.) The italicized sentence is redundant with Section 2024(g), which is a more
4 general provision. In this draft, Section 2024(g) would be continued without substantive change
5 in Section 2016.060. The second sentence of Section 2024(a) would not be continued, because it
6 appears to be unnecessary.

7 **§ 2024.030. Discovery cutoff for expert witness**

8 2024.030. Any party shall be entitled as a matter of right to complete discovery
9 proceedings pertaining to a witness identified under Chapter 18 (commencing with
10 Section 2034.010) on or before the 15th day, and to have motions concerning that
11 discovery heard on or before the 10th day, before the date initially set for the trial
12 of the action.

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

15 **§ 2024.040. Exceptions to discovery cutoff**

16 2024.040. (a) The time limit on completing discovery in an action to be
17 arbitrated under Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part
18 3 is subject to Judicial Council Rule. After an award in a case ordered to judicial
19 arbitration, completion of discovery is limited by Section 1141.24.

20 (b) This chapter does not apply to either of the following:

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

25 (2) Eminent domain proceedings governed by Title 7 (commencing with Section
26 1230.010) of Part 3.

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

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

30 **§ 2024.050. Motion to extend or reopen discovery**

31 2024.050. (a) On motion of any party, the court may grant leave to complete
32 discovery proceedings, or to have a motion concerning discovery heard, closer to
33 the initial trial date, or to reopen discovery after a new trial date has been set. This
34 motion shall be accompanied by a meet and confer declaration under Section
35 2016.040.

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

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

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

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

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

9 (c) The court shall impose a monetary sanction under Chapter 7 (commencing
10 with Section 2023.010) against any party, person, or attorney who unsuccessfully
11 makes or opposes a motion to extend or to reopen discovery, unless it finds that
12 the one subject to the sanction acted with substantial justification or that other
13 circumstances make the imposition of the sanction unjust.

14 **Comment.** Subdivision (a) of Section 2024.050 continues the first paragraph of former Section
15 2024(e) without substantive change.

16 Subdivision (b) continues the second paragraph (including items (1)-(4)) of former Section
17 2024(e) without change.

18 Subdivision (c) continues the last paragraph of former Section 2024(e) without change, except
19 to conform the cross-reference.

20 § 2024.060. Agreement extending discovery cutoff

21 2024.060. Parties to an action may, with the consent of any party affected by it,
22 enter into an agreement to extend the time for the completion of discovery
23 proceedings or for the hearing of motions concerning discovery, or to reopen
24 discovery after a new date for trial of the action has been set. This agreement may
25 be informal, but it shall be confirmed in a writing that specifies the extended date.
26 In no event shall this agreement require a court to grant a continuance or
27 postponement of the trial of the action.

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

29 CHAPTER 9. ORAL DEPOSITION INSIDE CALIFORNIA

30 Article 1. General Provisions

31 § 2025.010. Oral deposition inside California

32 2025.010. Any party may obtain discovery within the scope delimited by
33 Chapters 2 (commencing with Section 2017.010) and 3 (commencing with Section
34 2017.510), and subject to the restrictions set forth in Chapter 5 (commencing with
35 Section 2019.010), by taking in California the oral deposition of any person,
36 including any party to the action. The person deposed may be a natural person, an
37 organization such as a public or private corporation, a partnership, an association,
38 or a governmental agency.

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

1

Article 2. Deposition Notice

2 **§ 2025.210. Time of service of deposition notice**

3 2025.210. Subject to Sections 2025.270 and 2025.610, an oral deposition may be
4 taken as follows:

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

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

12 **Comment.** Section 2025.210 continues former Section 2025(b) without substantive change.
13 For the consequences of noncompliance with the requirements of a deposition notice, see Section
14 2025.410.

15 **§ 2025.220. Content of deposition notice**

16 2025.220. (a) A party desiring to take the oral deposition of any person shall
17 give notice in writing. The deposition notice shall state all of the following:

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

19 (2) The date of the deposition, selected under Section 2025.270, and the time it
20 will commence.

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

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

28 (5) Any intention by the party noticing the deposition to record the testimony by
29 audio or video technology, in addition to recording the testimony by the
30 stenographic method as required by Section 2025.330 and any intention to record
31 the testimony by stenographic method through the instant visual display of the
32 testimony. If the deposition will be conducted using instant visual display, a copy
33 of the deposition notice shall also be given to the deposition officer. Any offer to
34 provide the instant visual display of the testimony or to provide rough draft
35 transcripts to any party which is accepted prior to, or offered at, the deposition
36 shall also be made by the deposition officer at the deposition to all parties in
37 attendance. Any party or attorney requesting the provision of the instant visual
38 display of the testimony, or rough draft transcripts, shall pay the reasonable cost of
39 those services, which may be no greater than the costs charged to any other party
40 or attorney.

1 (6) Any intention to reserve the right to use at trial a video recording of the
2 deposition testimony of a treating or consulting physician or of any expert witness
3 under subdivision (d) of Section 2025.620. In this event, the operator of the video
4 camera shall be a person who is authorized to administer an oath, and shall not be
5 financially interested in the action or be a relative or employee of any attorney of
6 any of the parties.

7 (b) Notwithstanding subdivision (a), where under Article 4 (commencing with
8 Section 2020.410) only the production by a nonparty of business records for
9 copying is desired, a copy of the deposition subpoena shall serve as the notice of
10 deposition.

11 **Comment.** The introductory clause of subdivision (a) of Section 2025.220 continues the first
12 sentence of former Section 2025(c) and the introductory clause of former Section 2025(d) without
13 substantive change. Subdivision (a)(1) continues former Section 2025(d)(1) without change.
14 Subdivision (a)(2) continues former Section 2025(d)(2) without change, except to conform the
15 cross-reference. Subdivision (a)(3) continues former Section 2025(d)(3) without change.
16 Subdivision (a)(4) continues former Section 2025(d)(4) without change. Subdivision (a)(5)
17 continues former Section 2025(d)(5) without change, except to conform the cross-reference.
18 Subdivision (a)(6) continues the first paragraph of former Section 2025(d)(6) without change,
19 except to conform the cross-reference.

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

22 For the consequences of noncompliance with the requirements of a deposition notice, see
23 Section 2025.410.

24 ☞ **Note.** Subdivisions (a)(5) and (a)(6) of proposed Section 2025.220 incorporate revisions of
25 Section 2025 enacted in 2002. See AB 2842 (Harman), 2002 Cal. Stat. ch. 1068, § 2.

26 § 2025.230. Notice to deponent other than natural person

27 2025.230. If the deponent named is not a natural person, the deposition notice
28 shall describe with reasonable particularity the matters on which examination is
29 requested. In that event, the deponent shall designate and produce at the deposition
30 those of its officers, directors, managing agents, employees, or agents who are
31 most qualified to testify on its behalf as to those matters to the extent of any
32 information known or reasonably available to the deponent.

33 **Comment.** Section 2025.230 continues the first sentence of the second paragraph of former
34 Section 2025(d)(6) without change. For the consequences of noncompliance with the
35 requirements of a deposition notice, see Section 2025.410.

36 ☞ **Note.** The second sentence of the second paragraph of Section 2025(d)(6) states: “A
37 deposition subpoena shall advise a nonparty deponent of its duty to make this designation, and
38 shall describe with reasonable particularity the matters on which examination is requested.” This
39 sentence is redundant with the provisions governing deposition subpoenas. See proposed Sections
40 2020.310(e) and 2020.510(a)(1), which derive from Section 2020(c) and the first sentence of
41 Section 2020(e), respectively. Consequently, the second sentence of the second paragraph of
42 Section 2025(d)(6) is not continued in this draft.

43 § 2025.240. Service of deposition notice and related documents

44 2025.240. (a) The party who prepares a notice of deposition shall give the notice
45 to every other party who has appeared in the action. The deposition notice, or the

1 accompanying proof of service, shall list all the parties or attorneys for parties on
2 whom it is served.

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

7 (1) A notice of the deposition.

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

10 (3) A copy of the deposition subpoena.

11 (c) If the attendance of the deponent is to be compelled by service of a
12 deposition subpoena under Chapter 6 (commencing with Section 2020.010), an
13 identical copy of that subpoena shall be served with the deposition notice.

14 **Comment.** Subdivision (a) of Section 2025.240 continues the third and fourth sentences of
15 former Section 2025(c) without substantive change.

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

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

20 For the consequences of noncompliance with the requirements of a deposition notice, see
21 Section 2025.410.

22 § 2025.250. Place of deposition

23 2025.250. (a) Unless the court orders otherwise under Section 2025.260, the
24 deposition of a natural person, whether or not a party to the action, shall be taken
25 at a place that is, at the option of the party giving notice of the deposition, either
26 within 75 miles of the deponent's residence, or within the county where the action
27 is pending and within 150 miles of the deponent's residence.

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

33 (c) Unless the organization consents to a more distant place, the deposition of
34 any other organization shall be taken within 75 miles of the organization's
35 principal executive or business office in California. If the organization has not
36 designated a principal executive or business office in California, the deposition
37 shall be taken at a place that is, at the option of the party giving notice of the
38 deposition, either within the county where the action is pending, or within 75 miles
39 of any executive or business office in California of the organization.

40 **Comment.** Subdivision (a) of Section 2025.250 continues former Section 2025(e)(1) without
41 substantive change.

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

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

1 For the consequences of noncompliance with the requirements of a deposition notice, see
2 Section 2025.410.

3 **§ 2025.260. Motion to require party to attend deposition at more distant place**

4 2025.260. (a) A party desiring to take the deposition of a natural person who is a
5 party to the action or an officer, director, managing agent, or employee of a party
6 may make a motion for an order that the deponent attend for deposition at a place
7 that is more distant than that permitted under Section 2025.250. This motion shall
8 be accompanied by a meet and confer declaration under Section 2016.040.

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

13 (1) Whether the moving party selected the forum.

14 (2) Whether the deponent will be present to testify at the trial of the action.

15 (3) The convenience of the deponent.

16 (4) The feasibility of conducting the deposition by written questions under
17 Chapter 11 (commencing with Section 2028.010), or of using a discovery method
18 other than a deposition.

19 (5) The number of depositions sought to be taken at a place more distant than
20 that permitted under Section 2025.250.

21 (6) The expense to the parties of requiring the deposition to be taken within the
22 distance permitted under Section 2025.250.

23 (7) The whereabouts of the deponent at the time for which the deposition is
24 scheduled.

25 (c) The order may be conditioned on the advancement by the moving party of
26 the reasonable expenses and costs to the deponent for travel to the place of
27 deposition.

28 (d) The court shall impose a monetary sanction under Chapter 7 (commencing
29 with Section 2023.010) against any party, person, or attorney who unsuccessfully
30 makes or opposes a motion to increase the travel limits for a party deponent,
31 unless it finds that the one subject to the sanction acted with substantial
32 justification or that other circumstances make the imposition of the sanction
33 unjust.

34 **Comment.** Subdivision (a) of Section 2025.260 continues the first paragraph of former Section
35 2025(e)(3) without substantive change.

36 Subdivision (b) continues the second paragraph of former Section 2025(e)(3) (including items
37 (A)-(F)) without change, except to conform the cross-references.

38 Subdivision (c) continues the next-to-last paragraph of former Section 2025(e)(3) without
39 change.

40 Subdivision (d) continues the last paragraph of former Section 2025(e)(3) without substantive
41 change.

42 For the consequences of noncompliance with the requirements of a deposition notice, see
43 Section 2025.410.

1 ☞ **Note.** Proposed Section 2025.260(d) incorporates a revision of Section 2025 enacted in 2002.
2 See AB 2842 (Harman), 2002 Cal. Stat. ch. 1068, § 2.

3 **§ 2025.270. Time of taking oral deposition**

4 2025.270. (a) An oral deposition shall be scheduled for a date at least 10 days
5 after service of the deposition notice. If, as defined in subdivision (a) of Section
6 1985.3, the party giving notice of the deposition is a subpoenaing party, and the
7 deponent is a witness commanded by a deposition subpoena to produce personal
8 records of a consumer, the deposition shall be scheduled for a date at least 20 days
9 after issuance of that subpoena.

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

13 (c) On motion or ex parte application of any party or deponent, for good cause
14 shown, the court may shorten or extend the time for scheduling a deposition, or
15 may stay its taking until the determination of a motion for a protective order under
16 Section 2025.420.

17 **Comment.** Subdivision (a) of Section 2025.270 continues the first and second sentences of
18 former Section 2025(f) without change.

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

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

23 For the consequences of noncompliance with the requirements of a deposition notice, see
24 Section 2025.410.

25 **§ 2025.280. Effect of deposition notice**

26 2025.280. (a) The service of a deposition notice under Section 2025.240 is
27 effective to require any deponent who is a party to the action or an officer,
28 director, managing agent, or employee of a party to attend and to testify, as well as
29 to produce any document or tangible thing for inspection and copying.

30 (b) The attendance and testimony of any other deponent, as well as the
31 production by the deponent of any document or tangible thing for inspection and
32 copying, requires the service on the deponent of a deposition subpoena under
33 Chapter 6 (commencing with Section 2020.010).

34 **Comment.** Subdivision (a) of Section 2025.280 continues former Section 2025(h)(1) without
35 change, except to conform the cross-reference.

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

38 For the consequences of noncompliance with the requirements of a deposition notice, see
39 Section 2025.410.

Article 3. Conduct of Deposition

§ 2025.310. Deposition by remote electronic means

2025.310. (a) A person may take, and any person other than the deponent may attend, a deposition by telephone or other remote electronic means.

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

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

Comment. Subdivision (a) of Section 2025.310 continues the first sentence of former Section 2025(h)(3) without change.

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

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

Note. Proposed Section 2025.310(b) incorporates a revision of Section 2025 enacted in 2002. See AB 2842 (Harman), 2002 Cal. Stat. ch. 1068, § 2.

§ 2025.320. Deposition officer

2025.320. Except as provided in Section 2020.420, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath and is subject to all of the following requirements:

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

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

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

1 (d) Upon the request of any party or any party's attorney attending a deposition,
2 any party or any party's attorney attending the deposition shall enter in the record
3 of the deposition all services and products made available to that party or party's
4 attorney or third party who is financing all or part of the action by the deposition
5 officer or by the entity providing the services of the deposition officer. A party in
6 the action who is not represented by an attorney shall be informed by the noticing
7 party or the party's attorney that the unrepresented party may request this
8 statement.

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

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

14 **Comment.** The introductory clause of Section 2025.320 continues the introductory clause of
15 former Section 2025(k) without change, except to conform the cross-reference.

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

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

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

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

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

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

22 § 2025.330. Conduct of deposition

23 2025.330. (a) The deposition officer shall put the deponent under oath.

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

26 (c) The party noticing the deposition may also record the testimony by audio or
27 video technology if the notice of deposition stated an intention also to record the
28 testimony by either of those methods, or if all the parties agree that the testimony
29 may also be recorded by either of those methods. Any other party, at that party's
30 expense, may make a simultaneous audio or video record of the deposition,
31 provided that other party promptly, and in no event less than three calendar days
32 before the date for which the deposition is scheduled, serves a written notice of
33 this intention to make and audio or video record of the deposition testimony on the
34 party or attorney who noticed the deposition, on all other parties or attorneys on
35 whom the deposition notice was served under Section 2025.240, and on any
36 deponent whose attendance is being compelled by a deposition subpoena under
37 Chapter 6 (commencing with Section 2020.010). If this notice is given three
38 calendar days before the deposition date, it shall be made by personal service
39 under Section 1011.

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

42 (e) In lieu of participating in the oral examination, parties may transmit written
43 questions in a sealed envelope to the party taking the deposition for delivery to the

1 deposition officer, who shall unseal the envelope and propound them to the
2 deponent after the oral examination has been completed.

3 **Comment.** Subdivision (a) of Section 2025.330 continues the first sentence of former Section
4 2025(l)(1) without change.

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

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

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

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

10 ☞ **Note.** Proposed Section 2025.330(c) incorporates revisions of Section 2025 enacted in 2002.
11 See AB 2842 (Harman), 2002 Cal. Stat. ch. 1068, § 2.

12 **§ 2025.340. Deposition recorded by audio or video technology**

13 2025.340. If a deposition is being recorded by means of audio or video
14 technology, by, or at the direction of, any party, the following procedure shall be
15 observed:

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

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

22 (c) If a video recording of deposition testimony is to be used under subdivision
23 (d) of Section 2025.620, the operator of the recording equipment shall be a person
24 who is authorized to administer an oath, and shall not be financially interested in
25 the action or be a relative or employee of any attorney of any of the parties, unless
26 all parties attending the deposition agree on the record to waive these
27 qualifications and restrictions.

28 (d) Services and products offered or provided by the deposition officer or the
29 entity providing the services of the deposition officer to any party or to any party's
30 attorney or third party who is financing all or part of the action shall be offered or
31 provided to all parties or their attorneys attending the deposition. No service or
32 product may be offered or provided by the deposition officer or by the entity
33 providing the services of the deposition officer to any party or any party's attorney
34 or third party who is financing all or part of the action unless the service or product
35 is offered or provided to all parties or their attorneys attending the deposition. All
36 services and products offered or provided shall be made available at the same time
37 to all parties or their attorneys.

38 (e) The deposition officer or the entity providing the services of the deposition
39 officer shall not provide to any party or any other person or entity any service or
40 product consisting of the deposition officer's notations or comments regarding the
41 demeanor of any witness, attorney, or party present at the deposition. The
42 deposition officer or the entity providing the services of the deposition officer shall
43 not collect any personal identifying information about the witness as a service or

1 product to be provided to any party or third party who is financing all or part of the
2 action.

3 (f) Upon the request of any party or any party's attorney attending a deposition,
4 any party or any party's attorney attending the deposition shall enter in the record
5 of the deposition all services and products made available to that party or party's
6 attorney or third party who is financing all or part of the action by the deposition
7 officer or by the entity providing the services of the deposition officer. A party in
8 the action who is not represented by an attorney shall be informed by the noticing
9 party that the unrepresented party may request this statement.

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

12 (h) The deposition shall begin with an oral or written statement on camera or on
13 the audio recording that includes the operator's name and business address, the
14 name and business address of the operator's employer, the date, time, and place of
15 the deposition, the caption of the case, the name of the deponent, a specification of
16 the party on whose behalf the deposition is being taken, and any stipulations by the
17 parties.

18 (i) Counsel for the parties shall identify themselves on camera or on the audio
19 recording.

20 (j) The oath shall be administered to the deponent on camera or on the audio
21 recording.

22 (k) If the length of a deposition requires the use of more than one unit of tape or
23 electronic storage, the end of each unit and the beginning of each succeeding unit
24 shall be announced on camera or on the audio recording.

25 (l) At the conclusion of a deposition, a statement shall be made on camera or on
26 the audio recording that the deposition is ended and shall set forth any stipulations
27 made by counsel concerning the custody of the audio or video recording and the
28 exhibits, or concerning other pertinent matters.

29 (m) A party intending to offer an audio or video recording of a deposition in
30 evidence under Section 2025.620 shall notify the court and all parties in writing of
31 that intent and of the parts of the deposition to be offered. That notice shall be
32 given within sufficient time for objections to be made and ruled on by the judge to
33 whom the case is assigned for trial or hearing, and for any editing of the recording.
34 Objections to all or part of the deposition shall be made in writing. The court may
35 permit further designations of testimony and objections as justice may require.
36 With respect to those portions of an audio or video record of deposition testimony
37 that are not designated by any party or that are ruled to be objectionable, the court
38 may order that the party offering the recording of the deposition at the trial or
39 hearing suppress those portions, or that an edited version of the deposition
40 recording be prepared for use at the trial or hearing. The original audio or video
41 record of the deposition shall be preserved unaltered. If no stenographic record of
42 the deposition testimony has previously been made, the party offering an audio or

1 video recording of that testimony under Section 2025.620 shall accompany that
2 offer with a stenographic transcript prepared from that recording.

3 **Comment.** The introductory clause of Section 2025.340 continues the introductory clause of
4 former Section 2025(l)(2) without substantive change.

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

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

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

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

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

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

16 Subdivision (g) continues former Section 2025(l)(2)(C) without change.

17 Subdivision (h) continues former Section 2025(l)(2)(D) without change.

18 Subdivision (i) continues former Section 2025(l)(2)(E) without change.

19 Subdivision (j) continues former Section 2025(l)(2)(F) without change.

20 Subdivision (k) continues former Section 2025(l)(2)(G) without change.

21 Subdivision (l) continues former Section 2025(l)(2)(H) with revisions to encompass all types of
22 audio and video technology, not just audiotape and videotape.

23 Subdivision (m) continues former Section 2025(l)(2)(I) with revisions to conform cross-
24 references and to encompass all types of audio and video technology in the last sentence, not just
25 audiotape and videotape.

26 ☞ **Note.** Proposed Section 2025.340 incorporates revisions of Section 2025 enacted in 2002. See
27 AB 2842 (Harman), 2002 Cal. Stat. ch. 1068, § 2. The 2002 revisions expanded the statute to
28 encompass audio and video technology other than audiotape and videotape. A reference to “the
29 audiotape or videotape recording” still appears in Section 2025(l)(2)(H). This appears to have
30 been an oversight. Proposed Section 2025.340(l) would correct this apparent oversight.

31 Likewise, a reference to “a videotape or an audiotape recording” still appears in the last
32 sentence of Section 2025(l)(2)(I). Proposed Section 2025.340(m) would correct this apparent
33 oversight.

34 The Commission solicits comments on these provisions.

35 Article 4. Objections, Sanctions, Protective Orders, Motions To 36 Compel, and Suspension of Depositions

37 § 2025.410. Noncompliance with requirements for deposition notice

38 2025.410. (a) Any party served with a deposition notice that does not comply
39 with Article 2 (commencing with Section 2025.210) waives any error or
40 irregularity unless that party promptly serves a written objection specifying that
41 error or irregularity at least three calendar days prior to the date for which the
42 deposition is scheduled, on the party seeking to take the deposition and any other
43 attorney or party on whom the deposition notice was served.

44 (b) If an objection is made three calendar days before the deposition date, the
45 objecting party shall make personal service of that objection pursuant to Section
46 1011 on the party who gave notice of the deposition. Any deposition taken after

1 the service of a written objection shall not be used against the objecting party
2 under Section 2025.620 if the party did not attend the deposition and if the court
3 determines that the objection was a valid one.

4 (c) In addition to serving this written objection, a party may also move for an
5 order staying the taking of the deposition and quashing the deposition notice. This
6 motion shall be accompanied by a meet and confer declaration under Section
7 2016.040. The taking of the deposition is stayed pending the determination of this
8 motion.

9 (d) The court shall impose a monetary sanction under Chapter 7 (commencing
10 with Section 2023.010) against any party, person, or attorney who unsuccessfully
11 makes or opposes a motion to quash a deposition notice, unless it finds that the
12 one subject to the sanction acted with substantial justification or that other
13 circumstances make the imposition of the sanction unjust.

14 **Comment.** Subdivision (a) of Section 2025.410 continues the first sentence of former Section
15 2025(g) without change, except to conform the cross-references.

16 Subdivision (b) continues the second and third sentences of former Section 2025(g) without
17 change, except to conform a cross-reference.

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

20 Subdivision (d) continues the third paragraph of former Section 2025(g) without change, except
21 to conform the cross-reference.

22 **§ 2025.420. Motion for protective order**

23 2025.420. (a) Before, during, or after a deposition, any party, any deponent, or
24 any other affected natural person or organization may promptly move for a
25 protective order. The motion shall be accompanied by a meet and confer
26 declaration under Section 2016.040.

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

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

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

34 (3) That a video recording of the deposition testimony of a treating or consulting
35 physician or of any expert witness, intended for possible use at trial under
36 subdivision (d) of Section 2025.620, be postponed until the moving party has had
37 an adequate opportunity to prepare, by discovery deposition of the deponent, or
38 other means, for cross-examination.

39 (4) That the deposition be taken at a place other than that specified in the
40 deposition notice, if it is within a distance permitted by Sections 2025.250 and
41 2025.260.

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (d) The court shall impose a monetary sanction under Chapter 7 (commencing
27 with Section 2023.010) against any party, person, or attorney who unsuccessfully
28 makes or opposes a motion for a protective order, unless it finds that the one
29 subject to the sanction acted with substantial justification or that other
30 circumstances make the imposition of the sanction unjust.

31 **Comment.** Subdivision (a) of Section 2025.420 continues the first paragraph of former Section
32 2025(i) without substantive change.

33 Subdivision (b) continues the second paragraph (including items (1)-(15)) of former Section
34 2025(i) without change, except to conform the cross-references. Subdivision (b)(16) continues the
35 third and fourth sentences of former Section 2025(n) without substantive change.

36 Subdivision (c) continues the next-to-last paragraph of former Section 2025(i) without change.

37 Subdivision (d) continues the last paragraph of former Section 2025(i) without change, except
38 to conform the cross-reference.

39 ☞ **Note.** Proposed Section 2025.420(b)(3) incorporates revisions of Section 2025 enacted in
40 2002. See AB 2842 (Harman), 2002 Cal. Stat. ch. 1068, § 2.

41 **§ 2025.430. Sanctions where party giving notice of deposition fails to attend or proceed**

42 2025.430. If the party giving notice of a deposition fails to attend or proceed
43 with it, the court shall impose a monetary sanction under Chapter 7 (commencing

1 with Section 2023.010) against that party, or the attorney for that party, or both,
2 and in favor of any party attending in person or by attorney, unless it finds that the
3 one subject to the sanction acted with substantial justification or that other
4 circumstances make the imposition of the sanction unjust.

5 **Comment.** Section 2025.430 continues former Section 2025(j)(1) without change, except to
6 conform the cross-reference.

7 **§ 2025.440. Sanctions where nonparty deponent fails to appear**

8 2025.440. (a) If a deponent does not appear for a deposition because the party
9 giving notice of the deposition failed to serve a required deposition subpoena, the
10 court shall impose a monetary sanction under Chapter 7 (commencing with
11 Section 2023.010) against that party, or the attorney for that party, or both, in favor
12 of any other party who, in person or by attorney, attended at the time and place
13 specified in the deposition notice in the expectation that the deponent's testimony
14 would be taken, unless the court finds that the one subject to the sanction acted
15 with substantial justification or that other circumstances make the imposition of
16 the sanction unjust.

17 (b) If a deponent on whom a deposition subpoena has been served fails to attend
18 a deposition or refuses to be sworn as a witness, the court may impose on the
19 deponent the sanctions described in Section 2020.240.

20 **Comment.** Subdivision (a) of Section 2025.440 continues the first paragraph of former Section
21 2025(j)(2) without change, except to conform the cross-reference.

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

24 **§ 2025.450. Sanctions where party deponent fails to appear**

25 2025.450. (a) If, after service of a deposition notice, a party to the action or an
26 officer, director, managing agent, or employee of a party, or a person designated
27 by an organization that is a party under Section 2025.230, without having served a
28 valid objection under Section 2025.410, fails to appear for examination, or to
29 proceed with it, or to produce for inspection any document or tangible thing
30 described in the deposition notice, the party giving the notice may move for an
31 order compelling the deponent's attendance and testimony, and the production for
32 inspection of any document or tangible thing described in the deposition notice.

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

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

37 (2) The motion shall be accompanied by a meet and confer declaration under
38 Section 2016.040, or, when the deponent fails to attend the deposition and produce
39 the documents or things described in the deposition notice, by a declaration stating
40 that the petitioner has contacted the deponent to inquire about the nonappearance.

41 (c) If a motion under subdivision (a) is granted, the court shall:

1 (1) Impose a monetary sanction under Chapter 7 (commencing with Section
2 2023.010) against the deponent or the party with whom the deponent is affiliated,
3 unless it finds that the one subject to the sanction acted with substantial
4 justification or that other circumstances make the imposition of the sanction
5 unjust.

6 (2) Impose a monetary sanction under Chapter 7 (commencing with Section
7 2023.010) on motion of any other party who, in person or by attorney, attended at
8 the time and place specified in the deposition notice in the expectation that the
9 deponent's testimony would be taken, unless the court finds that the one subject to
10 the sanction acted with substantial justification or that other circumstances make
11 the imposition of the sanction unjust

12 (d) If that party or party-affiliated deponent then fails to obey an order
13 compelling attendance, testimony, and production, the court may make those
14 orders that are just, including the imposition of an issue sanction, an evidence
15 sanction, or a terminating sanction under Chapter 7 (commencing with Section
16 2023.010) against that party deponent or against the party with whom the deponent
17 is affiliated. In lieu of, or in addition to, this sanction, the court may impose a
18 monetary sanction under Chapter 7 (commencing with Section 2023.010) against
19 that deponent or against the party with whom that party deponent is affiliated, and
20 in favor of any party who, in person or by attorney, attended in the expectation that
21 the deponent's testimony would be taken pursuant to that order.

22 **Comment.** Subdivision (a) of Section 2025.450 continues the first sentence of former Section
23 2025(j)(3) without change, except to conform the cross-references.

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

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

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

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

34 If this motion is granted, the court shall also impose a monetary sanction under Section 2023
35 *against the deponent or the party with whom the deponent is affiliated*, unless it finds that the
36 one subject to the sanction acted with substantial justification or that other circumstances
37 make the imposition of the sanction unjust. *On motion of any other party who, in person or*
38 *by attorney, attended at the time and place specified in the deposition notice in the*
39 *expectation that the deponent's testimony would be taken*, the court shall also impose a
40 monetary sanction under Section 2023, unless it finds that the one subject to the sanction
41 acted with substantial justification or that other circumstances make the imposition of the
42 sanction unjust.

43 (Emphasis added.) Proposed Section 2025.450(c) would track this scheme, but the existing
44 provision is not well-worded.

45 The quoted sentences describe two monetary sanctions: (1) a sanction "against the deponent or
46 the party with whom the deponent is affiliated," and (2) a sanction to be awarded "[o]n motion of
47 any other party who, in person or by attorney, attended at the time and place specified in the

1 deposition notice in the expectation that the deponent’s testimony would be taken.” Presumably,
2 the sanction to be awarded “[o]n motion of any other party” is also to be awarded “against the
3 deponent or the party with whom the deponent is affiliated.” Thus, the two sanctions do not differ
4 in this respect. Rather, the distinction appears to be that one is to be awarded in favor of the party
5 who noticed the deposition and the other is to be awarded in favor of “any other party who, in
6 person or by attorney, attended at the time and place specified in the deposition notice in the
7 expectation that the deponent’s testimony would be taken.”

8 That could be made more clear by revising Section 2025.450(c) to read:

9 (c) (1) If a motion under subdivision (a) is granted, the court shall impose a monetary
10 sanction under Chapter 7 (commencing with Section 2023.010) in favor of the party who
11 noticed the deposition and against the deponent or the party with whom the deponent is
12 affiliated, unless the court finds that the one subject to the sanction acted with substantial
13 justification or that other circumstances make the imposition of the sanction unjust.

14 (2) On motion of any other party who, in person or by attorney, attended at the time and
15 place specified in the deposition notice in the expectation that the deponent’s testimony
16 would be taken, the court shall impose a monetary sanction under Chapter 7 (commencing
17 with Section 2023.010) in favor of that party and against the deponent or the party with
18 whom the deponent is affiliated, unless the court finds that the one subject to the sanction
19 acted with substantial justification or that other circumstances make the imposition of the
20 sanction unjust.

21 The Commission solicits comment on this alternative approach, as well as on the approach used
22 in proposed Section 2025.450(c).

23 **§ 2025.460. Waiver of error or irregularity**

24 2025.460. (a) The protection of information from discovery on the ground that it
25 is privileged or that it is a protected work product under Chapter 4 (commencing
26 with Section 2018.010) is waived unless a specific objection to its disclosure is
27 timely made during the deposition.

28 (b) Errors and irregularities of any kind occurring at the oral examination that
29 might be cured if promptly presented are waived unless a specific objection to
30 them is timely made during the deposition. These errors and irregularities include,
31 but are not limited to, those relating to the manner of taking the deposition, to the
32 oath or affirmation administered, to the conduct of a party, attorney, deponent, or
33 deposition officer, or to the form of any question or answer. Unless the objecting
34 party demands that the taking of the deposition be suspended to permit a motion
35 for a protective order under Sections 2025.420 and 2025.470, the deposition shall
36 proceed subject to the objection.

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

41 (d) If a deponent fails to answer any question or to produce any document or
42 tangible thing under the deponent’s control that is specified in the deposition
43 notice or a deposition subpoena, the party seeking that answer or production may
44 adjourn the deposition or complete the examination on other matters without
45 waiving the right at a later time to move for an order compelling that answer or
46 production under Section 2025.480.

1 **Comment.** Subdivision (a) of Section 2025.460 continues former Section 2025(m)(1) without
2 change, except to conform the cross-reference.

3 Subdivision (b) continues former Section 2025(m)(2) without change, except to conform the
4 cross-reference.

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

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

8 **§ 2025.470. Suspension of deposition**

9 2025.470. The deposition officer may not suspend the taking of testimony
10 without the stipulation of all parties present unless any party attending the
11 deposition, including the deponent, demands that the deposition officer suspend
12 taking the testimony to enable that party or deponent to move for a protective
13 order under Section 2025.420 on the ground that the examination is being
14 conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or
15 oppresses that deponent or party.

16 **Comment.** Section 2025.470 continues the first sentence of former Section 2025(n) without
17 substantive change. By incorporating the requirements of Section 2025.420, Section 2025.470
18 also continues the second sentence of former Section 2025(n) and the second paragraph of that
19 provision without substantive change. See Section 2025.420(a) (motion for protective order shall
20 be accompanied by meet and confer declaration); Section 2025.420(d) (monetary sanction against
21 party, person, or attorney who unsuccessfully makes or opposes motion for protective order).

22 ☞ **Note.** Proposed Section 2025.470 incorporates revisions of Section 2025 enacted in 2002. See
23 AB 2842 (Harman), 2002 Cal. Stat. ch. 1068, § 2.

24 **§ 2025.480. Motion to compel**

25 2025.480. (a) If a deponent fails to answer any question or to produce any
26 document or tangible thing under the deponent's control that is specified in the
27 deposition notice or a deposition subpoena, the party seeking discovery may move
28 the court for an order compelling that answer or production.

29 (b) This motion shall be made no later than 60 days after the completion of the
30 record of the deposition, and shall be accompanied by a meet and confer
31 declaration under Section 2016.040.

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

36 (d) Not less than five days prior to the hearing on this motion, the moving party
37 shall lodge with the court a certified copy of any parts of the stenographic
38 transcript of the deposition that are relevant to the motion. If a deposition is
39 recorded by audio or video technology, the moving party is required to lodge a
40 certified copy of a transcript of any parts of the deposition that are relevant to the
41 motion.

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

4 (f) The court shall impose a monetary sanction under Chapter 7 (commencing
5 with Section 2023.010) against any party, person, or attorney who unsuccessfully
6 makes or opposes a motion to compel answer or production, unless it finds that the
7 one subject to the sanction acted with substantial justification or that other
8 circumstances make the imposition of the sanction unjust

9 (g) If a deponent fails to obey an order entered under this section, the failure may
10 be considered a contempt of court. In addition, if the disobedient deponent is a
11 party to the action or an officer, director, managing agent, or employee of a party,
12 the court may make those orders that are just against the disobedient party, or
13 against the party with whom the disobedient deponent is affiliated, including the
14 imposition of an issue sanction, an evidence sanction, or a terminating sanction
15 under Chapter 7 (commencing with Section 2023.010). In lieu of, or in addition to,
16 this sanction, the court may impose a monetary sanction under Chapter 7
17 (commencing with Section 2023.010) against that party deponent or against any
18 party with whom the deponent is affiliated.

19 **Comment.** Subdivision (a) of Section 2025.480 continues the first sentence of former Section
20 2025(o) without change.

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


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

25 Subdivision (d) continues the fifth and sixth sentences of former Section 2025(o) without
26 change.

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

28 Subdivision (f) continues the second paragraph of former Section 2025(o) without change,
29 except to conform the cross-reference.

30 Subdivision (g) continues the third paragraph of former Section 2025(o) without change, except
31 to replace “subdivision” with “section” and to conform the cross-references.

32  **Note.** Proposed Section 2025.480(d) incorporates revisions of Section 2025 enacted in 2002.
33 See AB 2842 (Harman), 2002 Cal. Stat. ch. 1068, § 2.

34 Article 5. Transcript or Recording

35 § 2025.510. Transcription of testimony

36 2025.510. (a) Unless the parties agree otherwise, the testimony at any deposition
37 recorded by stenographic means shall be transcribed.

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

41 (c) Notwithstanding subdivision (b) of Section 2025.320, any other party or the
42 deponent, at the expense of that party or deponent, may obtain a copy of the
43 transcript.

1 (d) If the deposition officer receives a request from a party for an original or a
2 copy of the deposition transcript, or any portion thereof, and the full or partial
3 transcript will be available to that party prior to the time the original or copy
4 would be available to any other party, the deposition officer shall immediately
5 notify all other parties attending the deposition of the request, and shall, upon
6 request by any party other than the party making the original request, make that
7 copy of the full or partial deposition transcript available to all parties at the same
8 time.

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

15 (f) At the request of any other party to the action, including a party who did not
16 attend the taking of the deposition testimony, any party who records or causes the
17 recording of that testimony by means of audio or video technology shall promptly
18 do both of the following:

19 (1) Permit that other party to hear the audio recording or to view the video
20 recording.

21 (2) Furnish a copy of the audio or video recording to that other party on receipt
22 of payment of the reasonable cost of making that copy of the recording.

23 (g) If the testimony at the deposition is recorded both stenographically, and by
24 audio or video technology, the stenographic transcript is the official record of that
25 testimony for the purpose of the trial and any subsequent hearing or appeal.

26 **Comment.** Subdivision (a) of Section 2025.510 continues the first sentence of former Section
27 2025(p) without change.

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


29 Subdivision (c) continues the third sentence of former Section 2025(p) without substantive
30 change.

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

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

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

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

37  **Note.** Proposed Section 2025.510 incorporates revisions of Section 2025 enacted in 2002. See
38 AB 2842 (Harman), 2002 Cal. Stat. ch. 1068, § 2.

39 § 2025.520. Deponent's review of transcript

40 2025.520. (a) If the deposition testimony is stenographically recorded, the
41 deposition officer shall send written notice to the deponent and to all parties
42 attending the deposition when the original transcript of the testimony for each
43 session of the deposition is available for reading, correcting, and signing, unless
44 the deponent and the attending parties agree on the record that the reading,

1 correcting, and signing of the transcript of the testimony will be waived or that the
2 reading, correcting, and signing of a transcript of the testimony will take place
3 after the entire deposition has been concluded or at some other specific time.

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

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

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

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

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

26 (g) Notwithstanding subdivision (f), on a seasonable motion to suppress the
27 deposition, accompanied by a meet and confer declaration under Section
28 2016.040, the court may determine that the reasons given for the failure or refusal
29 to approve the transcript require rejection of the deposition in whole or in part.

30 (h) The court shall impose a monetary sanction under Chapter 7 (commencing
31 with Section 2023.010) against any party, person, or attorney who unsuccessfully
32 makes or opposes a motion to suppress a deposition [under this section], unless the
33 court finds that the one subject to the sanction acted with substantial justification
34 or that other circumstances make the imposition of the sanction unjust.

35 **Comment.** Subdivision (a) of Section 2025.520 continues the first sentence of former Section
36 2025(q)(1) without change.

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

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

41 Subdivision (d) continues the third sentence of the second paragraph of former Section
42 2025(q)(1) without change.

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

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

3 Subdivision (g) continues the fourth sentence of the third paragraph of former Section
4 2025(q)(1) without substantive change.

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

7 ☞ **Note.** The fourth paragraph of Section 2025(q)(1) states: “The court shall impose a monetary
8 sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or
9 opposes *a motion to suppress a deposition*, unless it finds that the one subject to the sanction
10 acted with substantial justification or that other circumstances make the imposition of the sanction
11 unjust.” (Emphasis added.) From this language, it is unclear whether the provision is meant to
12 apply to any motion to suppress a deposition, or only to a motion to suppress a stenographically
13 recorded deposition. The Commission presumes the latter, because otherwise language in Section
14 2025(q)(2) would be surplusage. The Commission solicits comment on whether the reference to a
15 “motion to suppress a deposition” should be changed to “motion to suppress a deposition under
16 this section,” as shown in brackets in proposed Section 2025.520(h).

17 **§ 2025.530. Deponent’s review of recording**

18 2025.530. (a) If there is no stenographic transcription of the deposition, the
19 deposition officer shall send written notice to the deponent and to all parties
20 attending the deposition that the audio or video recording made by, or at the
21 direction of, any party, is available for review, unless the deponent and all these
22 parties agree on the record to waive the hearing or viewing of the audio or video
23 recording of the testimony.

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

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

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

35 (e) Notwithstanding subdivision (d), on a reasonable motion to suppress the
36 deposition, accompanied by a meet and confer declaration under Section
37 2016.040, the court may determine that the reasons given for the refusal to sign
38 require rejection of the deposition in whole or in part.

39 (f) The court shall impose a monetary sanction under Chapter 7 (commencing
40 with Section 2023.010) against any party, person, or attorney who unsuccessfully
41 makes or opposes a motion to suppress a deposition [under this section], unless it
42 finds that the one subject to the sanction acted with substantial justification or that
43 other circumstances make the imposition of the sanction unjust.

44 **Comment.** Subdivision (a) of Section 2025.530 continues the first sentence of former Section
45 2025(q)(2) without change.

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

3 Subdivision (c) continues the first sentence of the second paragraph of former Section
4 2025(q)(2) without substantive change.

5 Subdivision (d) continues the second sentence of the second paragraph of former Section
6 2025(q)(2) without substantive change.

7 Subdivision (e) continues the third sentence of the second paragraph of former Section
8 2025(q)(2) without substantive change.

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

11  **Note.**

12 (1) Proposed Section 2025.530(a) incorporates revisions of Section 2025 enacted in 2002. See
13 AB 2842 (Harman), 2002 Cal. Stat. ch. 1068, § 2.

14 (2) The third paragraph of Section 2025(q)(2) states: “The court shall impose a monetary
15 sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or
16 opposes *a motion to suppress a deposition*, unless it finds that the one subject to the sanction
17 acted with substantial justification or that other circumstances make the imposition of the sanction
18 unjust.” (Emphasis added.) From this language, it is unclear whether the provision is meant to
19 apply to any motion to suppress a deposition, or only to a motion to suppress a deposition that is
20 not stenographically recorded. The Commission presumes the latter, because otherwise language
21 in Section 2025(q)(1) would be surplusage. The Commission solicits comment on whether the
22 reference to a “motion to suppress a deposition” should be changed to “motion to suppress a
23 deposition under this section,” as shown in brackets in proposed Section 2025.530(f).


24 **§ 2025.540. Certification of transcript**

25 2025.540. (a) The deposition officer shall certify on the transcript of the
26 deposition, or in a writing accompanying an audio or video record of deposition
27 testimony as described in Section 2025.530, that the deponent was duly sworn and
28 that the transcript or recording is a true record of the testimony given.

29 (b) When prepared as a rough draft transcript, the transcript of the deposition
30 may not be certified and may not be used, cited, or transcribed as the certified
31 transcript of the deposition proceedings. The rough draft transcript may not be
32 cited or used in any way or at any time to rebut or contradict the certified transcript
33 of deposition proceedings as provided by the deposition officer.

34 **Comment.** Subdivision (a) of Section 2025.540 continues former Section 2025(r)(1) without
35 change, except to conform the cross-reference.

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

37  **Note.** Proposed Section 2025.540(a) incorporates revisions of Section 2025 enacted in 2002.
38 See AB 2842 (Harman), 2002 Cal. Stat. ch. 1068, § 2.

39 **§ 2025.550. Sealing of transcript**

40 2025.550. (a) The certified transcript of a deposition shall not be filed with the
41 court. Instead, the deposition officer shall securely seal that transcript in an
42 envelope or package endorsed with the title of the action and marked: “Deposition
43 of (here insert name of deponent),” and shall promptly transmit it to the attorney
44 for the party who noticed the deposition. This attorney shall store it under
45 conditions that will protect it against loss, destruction, or tampering.

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

5 **Comment.** Subdivision (a) of Section 2025.550 continues the first paragraph of former Section
6 2025(s)(1) without change.

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

8 **§ 2025.560. Sealing of audio or video record**

9 2025.560. (a) An audio or video record of deposition testimony made by, or at
10 the direction of, any party, including a certified tape made by an operator qualified
11 under subdivisions (b) to (f), inclusive, of Section 2025.340, shall not be filed with
12 the court. Instead, the operator shall retain custody of that record and shall store it
13 under conditions that will protect it against loss, destruction, or tampering, and
14 preserve as far as practicable the quality of the recording and the integrity of the
15 testimony and images it contains.

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

19 (1) Permit the one making the request to hear or to view the recording on receipt
20 of payment of a reasonable charge for providing the facilities for hearing or
21 viewing the recording.

22 (2) Furnish a copy of the audio or video recording to the one making the request
23 on receipt of payment of the reasonable cost of making that copy of the recording.

24 (c) The attorney or operator who has custody of an audio or video record of
25 deposition testimony made by, or at the direction of, any party, shall retain custody
26 of it until six months after final disposition of the action. At that time, the audio or
27 video recording may be destroyed or erased, unless the court, on motion of any
28 party and for good cause shown, orders that the recording be preserved for a
29 longer period.

30 **Comment.** Subdivision (a) of Section 2025.560 continues the first paragraph of former Section
31 2025(s)(2) without change, except to conform the cross-reference.

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

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

35 ☞ **Note.** Proposed Section 2025.560 incorporates revisions of Section 2025 enacted in 2002. See
36 AB 2842 (Harman), 2002 Cal. Stat. ch. 1068, § 2.

37 **§ 2025.570. Copy of transcript, audio recording, or video recording for nonparty**

38 2025.570. (a) Notwithstanding subdivision (b) of Section 2025.320, unless the
39 court issues an order to the contrary, a copy of the transcript of the deposition
40 testimony made by, or at the direction of, any party, or an audio or video recording
41 of the deposition testimony, if still in the possession of the deposition officer, shall

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

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

6 (1) The copy is being sought.

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

8 (3) The right to seek a protective order under Section 2025.420.

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


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

14 **Comment.** Subdivision (a) of Section 2025.570 continues former Section 2025.5(a) without
15 substantive change.

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

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

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

20  **Note.** Subdivision (a) of proposed Section 2025.570 incorporates revisions of Section
21 2025.5(a) enacted in 2002. See AB 2842 (Harman), 2002 Cal. Stat. ch. 1068, § 3.

22 Article 6. Post-Deposition Procedures

23 § 2025.610. Subsequent deposition of same deponent

24 2025.610. (a) Once any party has taken the deposition of any natural person,
25 including that of a party to the action, neither the party who gave, nor any other
26 party who has been served with a deposition notice pursuant to Section 2025.240
27 may take a subsequent deposition of that deponent.

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

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

34 (1) The person was examined as a result of that person's designation to testify on
35 behalf of an organization under Section 2025.230.

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

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

41 **Comment.** Subdivision (a) of Section 2025.610 continues the first sentence of former Section
42 2025(t) without change, except to conform the cross-reference.

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

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

5 Subdivision (d) continues the fourth sentence of former Section 2025(t) without change, except
6 to replace “subdivision” with “section.”

7 **§ 2025.620. Use of deposition testimony**

8 2025.620. At the trial or any other hearing in the action, any part or all of a
9 deposition may be used against any party who was present or represented at the
10 taking of the deposition, or who had due notice of the deposition and did not serve
11 a valid objection under Section 2025.410, so far as admissible under the rules of
12 evidence applied as though the deponent were then present and testifying as a
13 witness, in accordance with the following provisions:

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

17 (b) An adverse party may use for any purpose, a deposition of a party to the
18 action, or of anyone who at the time of taking the deposition was an officer,
19 director, managing agent, employee, agent, or designee under Section 2025.230 of
20 a party. It is not ground for objection to the use of a deposition of a party under
21 this subdivision by an adverse party that the deponent is available to testify, has
22 testified, or will testify at the trial or other hearing.

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

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

28 (2) The deponent, without the procurement or wrongdoing of the proponent of
29 the deposition for the purpose of preventing testimony in open court, is any of the
30 following:

31 (A) Exempted or precluded on the ground of privilege from testifying
32 concerning the matter to which the deponent’s testimony is relevant.

33 (B) Disqualified from testifying.

34 (C) Dead or unable to attend or testify because of existing physical or mental
35 illness or infirmity.

36 (D) Absent from the trial or other hearing and the court is unable to compel the
37 deponent’s attendance by its process.

38 (E) Absent from the trial or other hearing and the proponent of the deposition
39 has exercised reasonable diligence but has been unable to procure the deponent’s
40 attendance by the court’s process.

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

1 (d) Any party may use a video recording of the deposition testimony of a treating
2 or consulting physician or of any expert witness even though the deponent is
3 available to testify if the deposition notice under Section 2025.220 reserved the
4 right to use the deposition at trial, and if that party has complied with subdivision
5 (m) of Section 2025.340.

6 (e) Subject to the requirements of this chapter, a party may offer in evidence all
7 or any part of a deposition, and if the party introduces only part of the deposition,
8 any other party may introduce any other parts that are relevant to the parts
9 introduced.

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

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

18 **Comment.** The introductory clause of Section 2025.620 continues the introductory clause of
19 former Section 2025(u) without change, except to conform the cross-reference.

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

21 Subdivision (b) continues former Section 2025(u)(2) without change, except to replace
22 “paragraph” with “subdivision” and to conform the cross-reference.


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

24 Subdivision (d) continues former Section 2025(u)(4) without change, except to conform the
25 cross-references.

26 Subdivision (e) continues former Section 2025(u)(5) without change, except to replace
27 “section” with “chapter.”

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

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

30  **Note.** Proposed Section 2025.620(d) incorporates revisions of Section 2025 enacted in 2002.
31 See AB 2842 (Harman), 2002 Cal. Stat. ch. 1068, § 2.

32 CHAPTER 10. ORAL DEPOSITION OUTSIDE CALIFORNIA

33 § 2026.010. Oral deposition in another state or territory of the United States

34 2026.010. (a) Any party may obtain discovery by taking an oral deposition, as
35 described in Section 2025.010, in another state of the United States, or in a
36 territory or an insular possession subject to its jurisdiction. Except as modified in
37 this section, the procedures for taking oral depositions in California set forth in
38 Chapter 9 (commencing with Section 2025.010) apply to an oral deposition taken
39 in another state of the United States, or in a territory or an insular possession
40 subject to its jurisdiction.

41 (b) If a deponent is a party to the action or an officer, director, managing agent,
42 or employee of a party, the service of the deposition notice is effective to compel
43 that deponent to attend and to testify, as well as to produce any document or

1 tangible thing for inspection and copying. The deposition notice shall specify a
2 place in the state, territory, or insular possession of the United States that is within
3 75 miles of the residence or a business office of a deponent.

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

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

12 (1) Under the supervision of a person who is authorized to administer oaths by
13 the laws of the United States or those of the place where the examination is to be
14 held, and who is not otherwise disqualified under Section 2025.320 and
15 subdivisions (b) to (f), inclusive, of Section 2025.340.

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

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

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

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

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

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

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

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

36 Subdivision (f) continues the third, fourth, fifth, sixth, and seventh sentences of former Section
37 2026(c) without substantive change.

38 **§ 2027.010. Oral deposition in foreign nation**

39 2027.010 (a) Any party may obtain discovery by taking an oral deposition, as
40 described in Section 2025.010, in a foreign nation. Except as modified in this
41 section, the procedures for taking oral depositions in California set forth in
42 Chapter 9 (commencing with Section 2025.010) apply to an oral deposition taken
43 in a foreign nation.

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

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

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

13 (1) A person who is authorized to administer oaths or their equivalent by the
14 laws of the United States or of the foreign nation, and who is not otherwise
15 disqualified under Section 2025.320 and subdivisions (b) to (f), inclusive, of
16 Section 2025.340.

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

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

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

27 **Comment.** Subdivision (a) of Section 2027.010 continues former Section 2027(a) without
28 change, except to conform the cross-references.

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

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

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

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

34 CHAPTER 11. DEPOSITION BY WRITTEN QUESTIONS

35 § 2028.010. Deposition by written questions

36 2028.010. Any party may obtain discovery by taking a deposition by written
37 questions instead of by oral examination. Except as modified in this chapter, the
38 procedures for taking oral depositions set forth in Chapters 9 (commencing with
39 Section 2025.010) and 10 (commencing with Section 2026.010) apply to written
40 depositions.

41 **Comment.** Section 2028.010 continues former Section 2028(a) without change, except to
42 replace “section” with “chapter” and to conform the cross-references.

1 **§ 2028.020. Notice of written deposition**

2 2028.020. The notice of a written deposition shall comply with Sections
3 2025.220 and 2025.230, and with subdivision (c) of Section 2020.240, except as
4 follows:

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

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

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

10 **§ 2028.030. Direct, cross, redirect, and recross questions**

11 2028.030. (a) The questions to be propounded to the deponent by direct
12 examination shall accompany the notice of a written deposition.

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

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

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

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

22 **Comment.** Subdivision (a) of Section 2028.030 continues the first paragraph of former Section
23 2028(c) without change.

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

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

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

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

28 **§ 2028.040. Objections**

29 2028.040. (a) A party who objects to the form of any question shall serve a
30 specific objection to that question on all parties entitled to notice of the deposition
31 within 15 days after service of the question. A party who fails to timely serve an
32 objection to the form of a question waives it.

33 (b) The objecting party shall promptly move the court to sustain the objection.
34 This motion shall be accompanied by a meet and confer declaration under Section
35 2016.040. Unless the court has sustained that objection, the deposition officer shall
36 propound to the deponent that question subject to that objection as to its form.

37 (c) The court shall impose a monetary sanction under Chapter 7 (commencing
38 with Section 2023.010) against any party, person, or attorney who unsuccessfully
39 makes or opposes a motion to sustain an objection, unless it finds that the one
40 subject to the sanction acted with substantial justification or that other
41 circumstances make the imposition of the sanction unjust.

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

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

5 Subdivision (c) continues the second paragraph of former Section 2028(d)(1) without change,
6 except to conform the cross-reference.

7 **§ 2028.050. Objection based on privilege**

8 2028.050. (a) A party who objects to any question on the ground that it calls for
9 information that is privileged or is protected work product under Chapter 4
10 (commencing with Section 2018.010) shall serve a specific objection to that
11 question on all parties entitled to notice of the deposition within 15 days after
12 service of the question. A party who fails to timely serve that objection waives it.

13 (b) The party propounding any question to which an objection is made on those
14 grounds may then move the court for an order overruling that objection. This
15 motion shall be accompanied by a meet and confer declaration under Section
16 2016.040. The deposition officer shall not propound to the deponent any question
17 to which a written objection on those grounds has been served unless the court has
18 overruled that objection.

19 (c) The court shall impose a monetary sanction under Chapter 7 (commencing
20 with Section 2023.010) against any party, person, or attorney who unsuccessfully
21 makes or opposes a motion to overrule an objection, unless it finds that the one
22 subject to the sanction acted with substantial justification or that other
23 circumstances make the imposition of the sanction unjust.

24 **Comment.** Subdivision (a) of Section 2028.050 continues the first and second sentences of
25 former Section 2028(d)(2) without change, except to conform the cross-reference.

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

28 Subdivision (c) continues the second paragraph of former Section 2028(d)(2) without change,
29 except to conform the cross-reference.

30 **§ 2028.060. Preview of questions**

31 2028.060. (a) The party taking a written deposition may forward to the deponent
32 a copy of the questions on direct examination for study prior to the deposition.

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

35 **Comment.** Subdivision (a) of Section 2028.060 continues the first sentence of former Section
36 2028(e) without change.

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

38 **§ 2028.070. Court orders**

39 2028.070. In addition to any appropriate order listed in Section 2025.420, the
40 court may order any of the following:

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

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

4 (c) That objections under Sections 2028.040 and 2028.050 be sustained or
5 overruled.

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

8 **Comment.** Section 2028.070 continues former Section 2028(f) without change, except to
9 conform the cross-reference.

10 **§ 2028.080. Duties of deposition officer**

11 2028.080. The party taking a written deposition shall deliver to the officer
12 designated in the deposition notice a copy of that notice and of all questions served
13 under Section 2028.030. The deposition officer shall proceed promptly to
14 propound the questions and to take and record the testimony of the deponent in
15 response to the questions.

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

17 **CHAPTER 12. DEPOSITION IN ACTION PENDING**
18 **OUTSIDE CALIFORNIA**

19 **§ 2029.010. Deposition in action pending outside California**

20 2029.010. Whenever any mandate, writ, letters rogatory, letter of request, or
21 commission is issued out of any court of record in any other state, territory, or
22 district of the United States, or in a foreign nation, or whenever, on notice or
23 agreement, it is required to take the oral or written deposition of a natural person in
24 California, the deponent may be compelled to appear and testify, and to produce
25 documents and things, in the same manner, and by the same process as may be
26 employed for the purpose of taking testimony in actions pending in California.

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

28 **CHAPTER 13. WRITTEN INTERROGATORIES**

29 **Article 1. Propounding Interrogatories**

30 **§ 2030.010. Written interrogatories to parties**

31 2030.010. (a) Any party may obtain discovery within the scope delimited by
32 Chapters 2 (commencing with Section 2017.010) and 3 (commencing with Section
33 2017.510), and subject to the restrictions set forth in Chapter 5 (commencing with
34 Section 2019.010), by propounding to any other party to the action written
35 interrogatories to be answered under oath.

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

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

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

10 **§ 2030.020. Time of propounding interrogatories**

11 2030.020. (a) A defendant may propound interrogatories to a party to the action
12 without leave of court at any time.

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

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

20 **Comment.** Subdivision (a) of Section 2030.020 continues the first sentence of former Section
21 2030(b) without change.

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

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

25 **§ 2030.030. Number of interrogatories**

26 2030.030. (a) A party may propound to another party either or both of the
27 following:

28 (1) 35 specially prepared interrogatories that are relevant to the subject matter of
29 the pending action.

30 (2) Any additional number of official form interrogatories, as described in
31 Chapter 17 (commencing with Section 2033.510), that are relevant to the subject
32 matter of the pending action.

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

37 (c) Unless a declaration as described in Section 2030.050 has been made, a party
38 need only respond to the first 35 specially prepared interrogatories served, if that
39 party states an objection to the balance, under Section 2030.240, on the ground
40 that the limit has been exceeded.

41 **Comment.** Subdivision (a) of Section 2030.030 continues the first sentence of former Section
42 2030(c)(1) without substantive change.

1 Subdivision (b) continues the second and third sentences of former Section 2030(c)(1) without
2 change, except to conform the cross-reference.

3 Subdivision (c) continues the fourth sentence of former Section 2030(c)(1) without change,
4 except to conform the cross-references.

5 **§ 2030.040. Extra interrogatories**

6 2030.040. (a) Subject to the right of the responding party to seek a protective
7 order under Section 2030.090, any party who attaches a supporting declaration as
8 described in Section 2030.050 may propound a greater number of specially
9 prepared interrogatories to another party if this greater number is warranted
10 because of any of the following:

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

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

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

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

21 **Comment.** Subdivision (a) of Section 2030.040 continues the first paragraph of former Section
22 2030(c)(2) (including items (A)-(C)) without change, except to conform the cross-references.

23 Subdivision (b) continues the last paragraph of former Section 2030(c)(2) without change.

24 **§ 2030.050. Declaration in support of extra interrogatories**

25 2030.050. Any party who is propounding or has propounded more than 35
26 specially prepared interrogatories to any other party shall attach to each set of
27 those interrogatories a declaration containing substantially the following:

28 **DECLARATION FOR ADDITIONAL DISCOVERY**

29 I, _____, declare:

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

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

33 3. This set of interrogatories will cause the total number of specially prepared
34 interrogatories propounded to the party to whom they are directed to exceed the
35 number of specially prepared interrogatories permitted by Section 2030.30 of the
36 Code of Civil Procedure.

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

39 5. This set of interrogatories contains a total of _____ specially prepared
40 interrogatories.

1 6. I am familiar with the issues and the previous discovery conducted by all of
2 the parties in the case.

3 7. I have personally examined each of the questions in this set of interrogatories.

4 8. This number of questions is warranted under Section 2030.040 of the Code of
5 Civil Procedure because _____. (Here state each factor described in Section
6 2030.040 that is relied on, as well as the reasons why any factor relied on is
7 applicable to the instant lawsuit.)

8 9. None of the questions in this set of interrogatories is being propounded for
9 any improper purpose, such as to harass the party, or the attorney for the party, to
10 whom it is directed, or to cause unnecessary delay or needless increase in the cost
11 of litigation.

12 I declare under penalty of perjury under the laws of California that the foregoing
13 is true and correct, and that this declaration was executed on _____.

14 _____
15 (Signature)

16 Attorney for _____

17 **Comment.** Section 2030.050 continues former Section 2030(c)(3) without change, except to
18 conform the cross-references.

19 **§ 2030.060. Form and contents of interrogatories**

20 2030.060. (a) A party propounding interrogatories shall number each set of
21 interrogatories consecutively.

22 (b) In the first paragraph immediately below the title of the case, there shall
23 appear the identity of the propounding party, the set number, and the identity of
24 the responding party.

25 (c) Each interrogatory in a set shall be separately set forth and identified by
26 number or letter.

27 (d) Each interrogatory shall be full and complete in and of itself. No preface or
28 instruction shall be included with a set of interrogatories unless it has been
29 approved under Chapter 17 (commencing with Section 2033.510).

30 (e) Any term specially defined in a set of interrogatories shall be typed with all
31 letters capitalized wherever that term appears.

32 (f) No specially prepared interrogatory shall contain subparts, or a compound,
33 conjunctive, or disjunctive question.

34 (g) An interrogatory may not be made a continuing one so as to impose on the
35 party responding to it a duty to supplement an answer to it that was initially correct
36 and complete with later acquired information.

37 **Comment.** Subdivision (a) of Section 2030.060 continues the first sentence of former Section
38 2030(c)(4) without change.

39 Subdivision (b) continues the second sentence of former Section 2030(c)(4) without change.

40 Subdivision (c) continues the third sentence of former Section 2030(c)(4) without change.

41 Subdivision (d) continues the first and second sentences of former Section 2030(c)(5) without
42 change, except to conform the cross-reference.

- 1 Subdivision (e) continues the third sentence of former Section 2030(c)(5) without change.
- 2 Subdivision (f) continues the fourth sentence of former Section 2030(c)(5) without change.
- 3 Subdivision (g) continues former Section 2030(c)(7) without change.

4 **§ 2030.070. Supplemental interrogatories**

5 2030.070. (a) In addition to the number of interrogatories permitted by Sections
6 2030.030 and 2030.040, a party may propound a supplemental interrogatory to
7 elicit any later acquired information bearing on all answers previously made by
8 any party in response to interrogatories.

9 (b) A party may propound a supplemental interrogatory twice before the initial
10 setting of a trial date, and, subject to the time limits on discovery proceedings and
11 motions provided in Chapter 8 (commencing with Section 2024.010), once after
12 the initial setting of a trial date.

13 (c) Notwithstanding subdivisions (a) and (b), on motion, for good cause shown,
14 the court may grant leave to a party to propound an additional number of
15 supplemental interrogatories.

16 **Comment.** Subdivisions (a) and (b) of Section 2030.070 continue the first sentence of former
17 Section 2030(c)(8) without substantive change.

18 Subdivision (c) continues the second sentence of former Section 2030(c)(8) without substantive
19 change.

20 **§ 2030.080. Service of interrogatories**

21 2030.080. (a) The party propounding interrogatories shall serve a copy of them
22 on the party to whom the interrogatories are directed.

23 (b) The propounding party shall also serve a copy of the interrogatories on all
24 other parties who have appeared in the action. On motion, with or without notice,
25 the court may relieve the party from this requirement on its determination that
26 service on all other parties would be unduly expensive or burdensome.

27 **Comment.** Section 2030.080 continues former Section 2030(d) without substantive change.

28 **§ 2030.090. Motion for protective order**

29 2030.090. (a) When interrogatories have been propounded, the responding party,
30 and any other party or affected natural person or organization may promptly move
31 for a protective order. This motion shall be accompanied by a meet and confer
32 declaration under Section 2016.040.

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

38 (1) That the set of interrogatories, or particular interrogatories in the set, need
39 not be answered.

40 (2) That, contrary to the representations made in a declaration submitted under
41 Section 2030.050, the number of specially prepared interrogatories is unwarranted.

1 (3) That the time specified in Section 2030.260 to respond to the set of
2 interrogatories, or to particular interrogatories in the set, be extended.

3 (4) That the response be made only on specified terms and conditions.

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

6 (6) That a trade secret or other confidential research, development, or
7 commercial information not be disclosed or be disclosed only in a certain way.

8 (7) That some or all of the answers to interrogatories be sealed and thereafter
9 opened only on order of the court.

10 (c) If the motion for a protective order is denied in whole or in part, the court
11 may order that the party provide or permit the discovery against which protection
12 was sought on terms and conditions that are just.

13 (d) The court shall impose a monetary sanction under Chapter 7 (commencing
14 with Section 2023.010) against any party, person, or attorney who unsuccessfully
15 makes or opposes a motion for a protective order [under this section], unless it
16 finds that the one subject to the sanction acted with substantial justification or that
17 other circumstances make the imposition of the sanction unjust.

18 **Comment.** Subdivision (a) of Section 2030.090 continues the first paragraph of former Section
19 2030(e) without substantive change.

20 Subdivision (b) continues the second paragraph of former Section 2030(e) (including items (1)-
21 (7)) without change, except to conform the cross-references.

22 Subdivision (c) continues the next-to-last paragraph of former Section 2030(e) without change.

23 Subdivision (d) continues the last paragraph of former Section 2030(e) without substantive
24 change.

25 ☞ **Note.** The last paragraph of Section 2030(e) states: “The court shall impose a monetary
26 sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or
27 opposes *a motion for a protective order*, unless it finds that the one subject to the sanction acted
28 with substantial justification or that other circumstances make the imposition of the sanction
29 unjust.” (Emphasis added.) From this language, it is unclear whether the provision is meant to
30 apply to any motion for a protective order, or only to a motion for a protective order relating to
31 interrogatories. The Commission presumes the latter, because otherwise language in other
32 discovery provisions would be surplusage. The Commission solicits comment on whether the
33 reference to “protective order” should be changed to “protective order under this section,” as
34 shown in brackets in proposed Section 2030.090(d).

35 Article 2. Response to Interrogatories

36 § 2030.210. Form of response to interrogatories

37 2030.210. (a) The party to whom interrogatories have been propounded shall
38 respond in writing under oath separately to each interrogatory by any of the
39 following:

40 (1) An answer containing the information sought to be discovered.

41 (2) An exercise of the party’s option to produce writings.

42 (3) An objection to the particular interrogatory.

1 (b) In the first paragraph of the response immediately below the title of the case,
2 there shall appear the identity of the responding party, the set number, and the
3 identity of the propounding party.

4 (c) Each answer, exercise of option, or objection in the response shall bear the
5 same identifying number or letter and be in the same sequence as the
6 corresponding interrogatory, but the text of that interrogatory need not be repeated.

7 **Comment.** Subdivision (a) of Section 2030.210 continues the first sentence of former Section
8 2030(f) without substantive change.

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

10 Subdivision (c) continues the third sentence of former Section 2030(f) without change.

11 **§ 2030.220. Completeness of response**

12 2030.220. (a) Each answer in a response to interrogatories shall be as complete
13 and straightforward as the information reasonably available to the responding
14 party permits.

15 (b) If an interrogatory cannot be answered completely, it shall be answered to the
16 extent possible.

17 (c) If the responding party does not have personal knowledge sufficient to
18 respond fully to an interrogatory, that party shall so state, but shall make a
19 reasonable and good faith effort to obtain the information by inquiry to other
20 natural persons or organizations, except where the information is equally available
21 to the propounding party.

22 **Comment.** Subdivision (a) of Section 2030.220 continues the first sentence of former Section
23 2030(f)(1) without substantive change.

24 Subdivision (b) continues the second sentence of former Section 2030(f)(1) without change.

25 Subdivision (c) continues the third sentence of former Section 2030(f)(1) without change.

26 **§ 2030.230. Answer necessitating preparation of compilation, abstract, audit, or summary**

27 2030.230. If the answer to an interrogatory would necessitate the preparation or
28 the making of a compilation, abstract, audit, or summary of or from the documents
29 of the party to whom the interrogatory is directed, and if the burden or expense of
30 preparing or making it would be substantially the same for the party propounding
31 the interrogatory as for the responding party, it is a sufficient answer to that
32 interrogatory to refer to this section and to specify the writings from which the
33 answer may be derived or ascertained. This specification shall be in sufficient
34 detail to permit the propounding party to locate and to identify, as readily as the
35 responding party can, the documents from which the answer may be ascertained.
36 The responding party shall then afford to the propounding party a reasonable
37 opportunity to examine, audit, or inspect these documents and to make copies,
38 compilations, abstracts, or summaries of them.

39 **Comment.** Section 2030.230 continues former Section 2030(f)(2) without change, except to
40 replace “subdivision” with “section.”

1 **§ 2030.240. Objection to interrogatory**

2 2030.240. (a) If only a part of an interrogatory is objectionable, the remainder of
3 the interrogatory shall be answered.

4 (b) If an objection is made to an interrogatory or to a part of an interrogatory, the
5 specific ground for the objection shall be set forth clearly in the response. If an
6 objection is based on a claim of privilege, the particular privilege invoked shall be
7 clearly stated. If an objection is based on a claim that the information sought is
8 protected work product under Chapter 4 (commencing with Section 2018.010),
9 that claim shall be expressly asserted.

10 **Comment.** Subdivision (a) of Section 2030.240 continues the first sentence of former Section
11 2030(f)(3) without change.

12 Subdivision (b) continues the second, third, and fourth sentences of former Section 2030(f)(3)
13 without change, except to conform the cross-reference.

14 **§ 2030.250. Signing of response to interrogatories**

15 2030.250. (a) The party to whom the interrogatories are directed shall sign the
16 response under oath unless the response contains only objections.

17 (b) If that party is a public or private corporation, or a partnership, association,
18 or governmental agency, one of its officers or agents shall sign the response under
19 oath on behalf of that party. If the officer or agent signing the response on behalf
20 of that party is an attorney acting in that capacity for the party, that party waives
21 any lawyer-client privilege and any protection for work product under Chapter 4
22 (commencing with Section 2018.010) during any subsequent discovery from that
23 attorney concerning the identity of the sources of the information contained in the
24 response.

25 (c) The attorney for the responding party shall sign any responses that contain an
26 objection.

27 **Comment.** Subdivision (a) of Section 2030.250 continues the first sentence of former Section
28 2030(g) without change.

29 Subdivision (b) continues the second and third sentences of former Section 2030(g) without
30 change, except to conform the cross-reference.

31 Subdivision (c) continues the fourth sentence of former Section 2030(g) without change.

32 **§ 2030.260. Service of response to interrogatories**

33 2030.260. (a) Within 30 days after service of interrogatories, or in unlawful
34 detrainer actions within five days after service of interrogatories the party to whom
35 the interrogatories are propounded shall serve the original of the response to them
36 on the propounding party, unless on motion of the propounding party the court has
37 shortened the time for response, or unless on motion of the responding party the
38 court has extended the time for response. In unlawful detrainer actions, the party to
39 whom the interrogatories are propounded shall have five days from the date of
40 service to respond unless on motion of the propounding party the court has
41 shortened the time for response.

1 (b) The party to whom the interrogatories are propounded shall also serve a copy
2 of the response on all other parties who have appeared in the action. On motion,
3 with or without notice, the court may relieve the party from this requirement on its
4 determination that service on all other parties would be unduly expensive or
5 burdensome.

6 **Comment.** Subdivision (a) of Section 2030.260 continues the first and second sentences of
7 former Section 2030(h) without change.

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

10 **§ 2030.270. Agreement to extend time for service of response**

11 2030.270. (a) The party propounding interrogatories and the responding party
12 may agree to extend the time for service of a response to a set of interrogatories, or
13 to particular interrogatories in a set, to a date beyond that provided in Section
14 2030.260.

15 (b) This agreement may be informal, but it shall be confirmed in a writing that
16 specifies the extended date for service of a response.

17 (c) Unless this agreement expressly states otherwise, it is effective to preserve to
18 the responding party the right to respond to any interrogatory to which the
19 agreement applies in any manner specified in Sections 2030.210, 2030.220,
20 2030.230, and 2030.240.

21 **Comment.** Subdivision (a) of Section 2030.270 continues the first sentence of former Section
22 2030(i) without change, except to conform the cross-reference.

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

24 Subdivision (c) continues the third sentence of former Section 2030(i) without change, except
25 to conform the cross-reference.

26 **§ 2030.280. Retention of original interrogatories and original response**

27 2030.280. (a) The interrogatories and the response thereto shall not be filed with
28 the court.

29 (b) The propounding party shall retain both the original of the interrogatories,
30 with the original proof of service affixed to them, and the original of the sworn
31 response until six months after final disposition of the action. At that time, both
32 originals may be destroyed, unless the court on motion of any party and for good
33 cause shown orders that the originals be preserved for a longer period.

34 **Comment.** Subdivision (a) of Section 2030.280 continues the first sentence of former Section
35 2030(j) without change.

36 Subdivision (b) continues the second and third sentences of former Section 2030(j) without
37 change.

38 **§ 2030.290. Failure to serve timely response**

39 2030.290. If a party to whom interrogatories are directed fails to serve a timely
40 response, the following rules apply:

41 (a) The party to whom the interrogatories are directed waives any right to
42 exercise the option to produce writings under Section 2030.230, as well as any

1 objection to the interrogatories, including one based on privilege or on the
2 protection for work product under Chapter 4 (commencing with Section
3 2018.010). The court, on motion, may relieve that party from this waiver on its
4 determination that both of the following conditions are satisfied:

5 (1) The party has subsequently served a response that is in substantial
6 compliance with Sections 2030.210, 2030.220, 2030.230, and 2030.240.

7 (2) The party's failure to serve a timely response was the result of mistake,
8 inadvertence, or excusable neglect.

9 (b) The party propounding the interrogatories may move for an order compelling
10 response to the interrogatories.

11 (c) The court shall impose a monetary sanction under Chapter 7 (commencing
12 with Section 2023.010) against any party, person, or attorney who unsuccessfully
13 makes or opposes a motion to compel a response to interrogatories, unless it finds
14 that the one subject to the sanction acted with substantial justification or that other
15 circumstances make the imposition of the sanction unjust. If a party then fails to
16 obey an order compelling answers, the court may make those orders that are just,
17 including the imposition of an issue sanction, an evidence sanction, or a
18 terminating sanction under Chapter 7 (commencing with Section 2023.010). In
19 lieu of or in addition to that sanction, the court may impose a monetary sanction
20 under Chapter 7 (commencing with Section 2023.010).

21 **Comment.** Subdivision (a) of Section 2030.290 continues the first paragraph of former Section
22 2030(k) without substantive change.

23 Subdivision (b) continues the first sentence of the second paragraph of former Section 2030(k)
24 without change.

25 Subdivision (c) continues the second, third, and fourth sentences of the second paragraph of
26 former Section 2030(k) without change, except to conform the cross-references.

27 **§ 2030.300. Motion to compel further response**

28 2030.300. (a) On receipt of a response to interrogatories, the propounding party
29 may move for an order compelling a further response if the propounding party
30 deems that any of the following apply:

31 (1) An answer to a particular interrogatory is evasive or incomplete.

32 (2) An exercise of the option to produce documents under Section 2030.230 is
33 unwarranted or the required specification of those documents is inadequate.

34 (3) An objection to an interrogatory is without merit or too general.

35 (b) A motion under subdivision (a) shall be accompanied by a meet and confer
36 declaration under Section 2016.040.

37 (c) Unless notice of this motion is given within 45 days of the service of the
38 response, or any supplemental response, or on or before any specific later date to
39 which the propounding party and the responding party have agreed in writing, the
40 propounding party waives any right to compel a further response to the
41 interrogatories.

42 (d) The court shall impose a monetary sanction under Chapter 7 (commencing
43 with Section 2023.010) against any party, person, or attorney who unsuccessfully

1 makes or opposes a motion to compel a further response to interrogatories, unless
2 it finds that the one subject to the sanction acted with substantial justification or
3 that other circumstances make the imposition of the sanction unjust.

4 (e) If a party then fails to obey an order compelling further response to
5 interrogatories, the court may make those orders that are just, including the
6 imposition of an issue sanction, an evidence sanction, or a terminating sanction
7 under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to
8 that sanction, the court may impose a monetary sanction under Chapter 7
9 (commencing with Section 2023.010).

10 **Comment.** Subdivision (a) of Section 2030.300 continues the first sentence of former Section
11 2030(l) without substantive change.

12 Subdivision (b) continues the second sentence of former Section 2030(l) without substantive
13 change.

14 Subdivision (c) continues the second paragraph of former Section 2030(l) without change.

15 Subdivision (d) continues the third paragraph of former Section 2030(l) without change, except
16 to conform the cross-reference.

17 Subdivision (e) continues the fourth paragraph of former Section 2030(l) without change,
18 except to conform the cross-references.

19 **§ 2030.310. Amended answer to interrogatory**

20 2030.310. (a) Without leave of court, a party may serve an amended answer to
21 any interrogatory that contains information subsequently discovered, inadvertently
22 omitted, or mistakenly stated in the initial interrogatory. At the trial of the action,
23 the propounding party or any other party may use the initial answer under Section
24 2030.510, and the responding party may then use the amended answer.

25 (b) The party who propounded an interrogatory to which an amended answer has
26 been served may move for an order that the initial answer to that interrogatory be
27 deemed binding on the responding party for the purpose of the pending action.
28 This motion shall be accompanied by a meet and confer declaration under Section
29 2016.040.

30 (c) The court shall grant a motion under subdivision (b) if it determines that all
31 of the following conditions are satisfied:

32 (1) The initial failure of the responding party to answer the interrogatory
33 correctly has substantially prejudiced the party who propounded the interrogatory.

34 (2) The responding party has failed to show substantial justification for the initial
35 answer to that interrogatory.

36 (3) The prejudice to the propounding party cannot be cured either by a
37 continuance to permit further discovery or by the use of the initial answer under
38 Section 2030.510.

39 (d) The court shall impose a monetary sanction under Chapter 7 (commencing
40 with Section 2023.010) against any party, person, or attorney who unsuccessfully
41 makes or opposes a motion to deem binding an initial answer to an interrogatory,
42 unless it finds that the one subject to the sanction acted with substantial

1 justification or that other circumstances make the imposition of the sanction
2 unjust.

3 **Comment.** Subdivision (a) of Section 2030.310 continues the first paragraph of former Section
4 2030(m) without change, except to conform the cross-reference.

5 Subdivision (b) continues the first and second sentences of the second paragraph of former
6 Section 2030(m) without substantive change.

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

9 Subdivision (d) continues the third paragraph of former Section 2030(m) without change,
10 except to conform the cross-reference.

11 Article 3. Use of Interrogatory Answer

12 § 2030.510. Use of interrogatory answer

13 2030.510. At the trial or any other hearing in the action, so far as admissible
14 under the rules of evidence, the propounding party or any party other than the
15 responding party may use any answer or part of an answer to an interrogatory only
16 against the responding party. It is not ground for objection to the use of an answer
17 to an interrogatory that the responding party is available to testify, has testified, or
18 will testify at the trial or other hearing.

19 **Comment.** Section 2030.510 continues former Section 2030(n) without change.

20 CHAPTER 14. INSPECTION AND PRODUCTION OF DOCUMENTS, 21 TANGIBLE THINGS, LAND, AND OTHER PROPERTY

22 Article 1. Inspection Demand

23 § 2031.010. Inspection and production of documents, tangible things, land, and other 24 property

25 2031.010. (a) Any party may obtain discovery within the scope delimited by
26 Chapters 2 (commencing with Section 2017.010) and 3 (commencing with Section
27 2017.510), and subject to the restrictions set forth in Chapter 5 (commencing with
28 Section 2019.010), by inspecting documents, tangible things, and land or other
29 property that are in the possession, custody, or control of any other party to the
30 action.

31 (b) A party may demand that any other party produce and permit the party
32 making the demand, or someone acting on that party's behalf, to inspect and to
33 copy a document that is in the possession, custody, or control of the party on
34 whom the demand is made.

35 (c) A party may demand that any other party produce and permit the party
36 making the demand, or someone acting on that party's behalf, to inspect and to
37 photograph, test, or sample any tangible things that are in the possession, custody,
38 or control of the party on whom the demand is made.

1 (d) A party may demand that any other party allow the party making the
2 demand, or someone acting on that party's behalf, to enter on any land or other
3 property that is in the possession, custody, or control of the party on whom the
4 demand is made, and to inspect and to measure, survey, photograph, test, or
5 sample the land or other property, or any designated object or operation on it.

6 **Comment.** Subdivision (a) of Section 2031.010 continues the introductory paragraph of former
7 Section 2031(a) without change, except to conform the cross-references.

8 Subdivision (b) continues former Section 2031(a)(1) without change.

9 Subdivision (c) continues former Section 2031(a)(2) without change.

10 Subdivision (d) continues former Section 2031(a)(3) without change.

11 **§ 2031.020. Time of making inspection demand**

12 2031.020. (a) A defendant may make a demand for inspection without leave of
13 court at any time.

14 (b) A plaintiff may make a demand for inspection without leave of court at any
15 time that is 10 days after the service of the summons on, or in unlawful detainer
16 actions within five days after service of the summons on or appearance by, the
17 party to whom the demand is directed, whichever occurs first.

18 (c) Notwithstanding subdivision (b), on motion with or without notice, the court,
19 for good cause shown, may grant leave to a plaintiff to make an inspection demand
20 at an earlier time.

21 **Comment.** Subdivision (a) of Section 2031.020 continues the first sentence of former Section
22 2031(b) without change.

23 Subdivision (b) of Section 2031.020 continues the second sentence of former Section 2031(b)
24 without change.

25 Subdivision (c) continues the third sentence of former Section 2031(b) without substantive
26 change.

27 **§ 2031.030. Form of inspection demand**

28 2031.030. (a) A party demanding an inspection shall number each set of
29 demands consecutively.

30 (b) In the first paragraph immediately below the title of the case, there shall
31 appear the identity of the demanding party, the set number, and the identity of the
32 responding party.

33 (c) Each demand in a set shall be separately set forth, identified by number or
34 letter, and shall do all of the following:

35 (1) Designate the documents, tangible things, or land or other property to be
36 inspected either by specifically describing each individual item or by reasonably
37 particularizing each category of item.

38 (2) Specify a reasonable time for the inspection that is at least 30 days after
39 service of the demand, or in unlawful detainer actions at least five days after
40 service of the demand, unless the court for good cause shown has granted leave to
41 specify an earlier date.

42 (3) Specify a reasonable place for making the inspection, copying, and
43 performing any related activity.

1 (4) Specify any related activity that is being demanded in addition to an
2 inspection and copying, as well as the manner in which that related activity will be
3 performed, and whether that activity will permanently alter or destroy the item
4 involved.

5 **Comment.** Subdivision (a) of Section 2031.030 continues the first sentence of former Section
6 2031(c) without change.

7 Subdivision (b) continues the second sentence of former Section 2031(c) without change.

8 Subdivision (c) continues the third sentence of former Section 2031(c) (including items (1)-(4))
9 without change.

10 **§ 2031.040. Service of inspection demand**

11 2031.040. The party demanding an inspection shall serve a copy of the
12 inspection demand on the party to whom it is directed and on all other parties who
13 have appeared in the action.

14 **Comment.** Section 2031.040 continues former Section 2031(d) without change.

15 **§ 2031.050. Supplemental inspection demand**

16 2031.050. (a) In addition to the inspection demands permitted by this chapter, a
17 party may propound a supplemental demand to inspect any later acquired or
18 discovered documents, tangible things, or land or other property that are in the
19 possession, custody, or control of the party on whom the demand is made.

20 (b) A party may propound a supplemental inspection demand twice before the
21 initial setting of a trial date, and, subject to the time limits on discovery
22 proceedings and motions provided in Chapter 8 (commencing with Section
23 2024.010), once after the initial setting of a trial date.

24 (c) Notwithstanding subdivisions (a) and (b), on motion, for good cause shown,
25 the court may grant leave to a party to propound an additional number of
26 supplemental demands for inspection.

27 **Comment.** Subdivisions (a) and (b) of Section 2031.050 continue the first sentence of former
28 Section 2031(e) without substantive change.

29 Subdivision (c) continues the second sentence of former Section 2031(e) without substantive
30 change.

31 **§ 2031.060. Motion for protective order**

32 2031.060. (a) When an inspection of documents, tangible things or places has
33 been demanded, the party to whom the demand has been directed, and any other
34 party or affected person or organization, may promptly move for a protective
35 order. This motion shall be accompanied by a meet and confer declaration under
36 Section 2016.040.

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

1 (1) That all or some of the items or categories of items in the inspection demand
2 need not be produced or made available at all.

3 (2) That the time specified in Section 2030.260 to respond to the set of
4 inspection demands, or to a particular item or category in the set, be extended.

5 (3) That the place of production be other than that specified in the inspection
6 demand.

7 (4) That the inspection be made only on specified terms and conditions.

8 (5) That a trade secret or other confidential research, development, or
9 commercial information not be disclosed, or be disclosed only to specified persons
10 or only in a specified way.

11 (6) That the items produced be sealed and thereafter opened only on order of the
12 court.

13 (c) If the motion for a protective order is denied in whole or in part, the court
14 may order that the party to whom the demand was directed provide or permit the
15 discovery against which protection was sought on terms and conditions that are
16 just.

17 (d) The court shall impose a monetary sanction under Chapter 7 (commencing
18 with Section 2023.010) against any party, person, or attorney who unsuccessfully
19 makes or opposes a motion for a protective order, unless it finds that the one
20 subject to the sanction acted with substantial justification or that other
21 circumstances make the imposition of the sanction unjust.

22 **Comment.** Subdivision (a) of Section 2031.060 continues the first paragraph of former Section
23 2031(f) without substantive change.

24 Subdivision (b) continues the second paragraph of former Section 2031(f) (including items (1)-
25 (6)) without change, except to conform the cross-reference.

26 Subdivision (c) continues the next-to-last paragraph of former Section 2031(f) without change.

27 Subdivision (d) continues the last paragraph of former Section 2031(f) without change, except
28 to conform the cross-reference.

29 Article 2. Response to Inspection Demand

30 § 2031.210. Response to inspection demand

31 2031.210. (a) The party to whom an inspection demand has been directed shall
32 respond separately to each item or category of item by any of the following:

33 (1) A statement that the party will comply with the particular demand for
34 inspection and any related activities.

35 (2) A representation that the party lacks the ability to comply with the demand
36 for inspection of a particular item or category of item.

37 (3) An objection to the particular demand.

38 (b) In the first paragraph of the response immediately below the title of the case,
39 there shall appear the identity of the responding party, the set number, and the
40 identity of the demanding party.

41 (c) Each statement of compliance, each representation, and each objection in the
42 response shall bear the same number and be in the same sequence as the

1 corresponding item or category in the demand, but the text of that item or category
2 need not be repeated.

3 **Comment.** Subdivision (a) of Section 2031.210 continues the first paragraph of former Section
4 2031(g) without substantive change.

5 Subdivision (b) continues the first sentence of the second paragraph of former Section 2031(g)
6 without change.

7 Subdivision (c) continues the second sentence of the second paragraph of former Section
8 2031(g) without change.

9 **§ 2031.220. Statement of compliance with inspection demand**

10 2031.220. A statement that the party to whom an inspection demand has been
11 directed will comply with the particular demand shall state that the production,
12 inspection, and related activity demanded will be allowed either in whole or in
13 part, and that all documents or things in the demanded category that are in the
14 possession, custody, or control of that party and to which no objection is being
15 made will be included in the production.

16 **Comment.** Section 2031.220 continues the first paragraph of former Section 2031(g)(1)
17 without change.

18 **§ 2031.230. Representation of inability to comply with inspection demand**

19 2031.230. A representation of inability to comply with the particular demand for
20 inspection shall affirm that a diligent search and a reasonable inquiry has been
21 made in an effort to comply with that demand. This statement shall also specify
22 whether the inability to comply is because the particular item or category has
23 never existed, has been destroyed, has been lost, misplaced, or stolen, or has never
24 been, or is no longer, in the possession, custody, or control of the responding
25 party. The statement shall set forth the name and address of any natural person or
26 organization known or believed by that party to have possession, custody, or
27 control of that item or category of item.

28 **Comment.** Section 2031.230 continues former Section 2031(g)(2) without change.

29 **§ 2031.240. Objection to inspection demand**

30 2031.240. (a) If only part of an item or category of item in an inspection demand
31 is objectionable, the response shall contain a statement of compliance, or a
32 representation of inability to comply with respect to the remainder of that item or
33 category.

34 (b) If the responding party objects to the demand for inspection of an item or
35 category of item, the response shall do both of the following:

36 (1) Identify with particularity any document, tangible thing, or land falling
37 within any category of item in the demand to which an objection is being made.

38 (2) Set forth clearly the extent of, and the specific ground for, the objection. If an
39 objection is based on a claim of privilege, the particular privilege invoked shall be
40 stated. If an objection is based on a claim that the information sought is protected

1 work product under Chapter 4 (commencing with Section 2018.010), that claim
2 shall be expressly asserted.

3 **Comment.** Subdivision (a) of Section 2031.240 continues the first sentence of former Section
4 2031(g)(3) without change.

5 Subdivision (b) continues the second, third, and fourth sentences of former Section 2031(g)(3)
6 without substantive change.

7 **§ 2031.250. Signing of response to inspection demand**

8 2031.250. (a) The party to whom the demand for inspection is directed shall sign
9 the response under oath unless the response contains only objections.

10 (b) If that party is a public or private corporation or a partnership or association
11 or governmental agency, one of its officers or agents shall sign the response under
12 oath on behalf of that party. If the officer or agent signing the response on behalf
13 of that party is an attorney acting in that capacity for a party, that party waives any
14 lawyer-client privilege and any protection for work product under Chapter 4
15 (commencing with Section 2018.010) during any subsequent discovery from that
16 attorney concerning the identity of the sources of the information contained in the
17 response.

18 (c) The attorney for the responding party shall sign any responses that contain an
19 objection.

20 **Comment.** Subdivision (a) of Section 2031.250 continues the first sentence of former Section
21 2031(h) without change.

22 Subdivision (b) continues the second and third sentences of former Section 2031(h) without
23 change, except to conform the cross-reference.

24 Subdivision (c) continues the fourth sentence of former Section 2031(h) without change.

25 **§ 2031.260. Service of response to inspection demand**

26 2031.260. Within 30 days after service of an inspection demand, or in unlawful
27 detainer actions within five days of an inspection demand, the party to whom the
28 demand is directed shall serve the original of the response to it on the party
29 making the demand, and a copy of the response on all other parties who have
30 appeared in the action, unless on motion of the party making the demand, the court
31 has shortened the time for response, or unless on motion of the party to whom the
32 demand has been directed, the court has extended the time for response. In
33 unlawful detainer actions, the party to whom an inspection demand is directed
34 shall have at least five days from the dates of service of the demand to respond,
35 unless on motion of the party making the demand, the court has shortened the time
36 for the response.

37 **Comment.** Section 2031.260 continues former Section 2031(i) without change.

38 **§ 2031.270. Agreement to extend time for service of response**

39 2031.270. (a) The party demanding an inspection and the responding party may
40 agree to extend the time for service of a response to a set of inspection demands,

1 or to particular items or categories of items in a set, to a date beyond that provided
2 in Section 2031.260.

3 (b) This agreement may be informal, but it shall be confirmed in a writing that
4 specifies the extended date for service of a response.

5 (c) Unless this agreement expressly states otherwise, it is effective to preserve to
6 the responding party the right to respond to any item or category of item in the
7 demand to which the agreement applies in any manner specified in Sections
8 2031.210, 2031.220, 2031.230, 2031.240, and 2031.280.

9 **Comment.** Subdivision (a) of Section 2031.270 continues the first sentence of former Section
10 2031(j) without change, except to conform the cross-reference.

11 Subdivision (b) continues the second sentence of former Section 2031(j) without change.

12 Subdivision (c) continues the third sentence of former Section 2031(j) without change, except
13 to conform the cross-reference.

14 § 2031.280. Manner of production

15 2031.280. (a) Any documents produced in response to an inspection demand
16 shall either be produced as they are kept in the usual course of business, or be
17 organized and labeled to correspond with the categories in the demand.

18 (b) If necessary, the responding party at the reasonable expense of the
19 demanding party shall, through detection devices, translate any data compilations
20 included in the demand into reasonably usable form.

21 **Comment.** Subdivision (a) of Section 2031.280 continues the first sentence of the second
22 paragraph of former Section 2031(g)(1) without substantive change.

23 Subdivision (b) continues the second sentence of the second paragraph of former Section
24 2031(g)(1) without change.

25 § 2031.290. Retention of original inspection demand and original response

26 2031.290. (a) The inspection demand and the response to it shall not be filed
27 with the court.

28 (b) The party demanding an inspection shall retain both the original of the
29 inspection demand, with the original proof of service affixed to it, and the original
30 of the sworn response until six months after final disposition of the action. At that
31 time, both originals may be destroyed, unless the court, on motion of any party and
32 for good cause shown, orders that the originals be preserved for a longer period.

33 **Comment.** Subdivision (a) of Section 2031.290 continues the first sentence of former Section
34 2031(k) without change.

35 Subdivision (b) continues the second and third sentences of former Section 2031(k) without
36 change.

37 § 2031.300. Failure to serve timely response

38 2031.300. If a party to whom an inspection demand is directed fails to serve a
39 timely response to it, the following rules apply:

40 (a) The party to whom the inspection demand is directed waives any objection to
41 the demand, including one based on privilege or on the protection for work
42 product under Chapter 4 (commencing with Section 2108.010). The court, on

1 motion, may relieve that party from this waiver on its determination that both of
2 the following conditions are satisfied:

3 (1) The party has subsequently served a response that is in substantial
4 compliance with Sections 2031.210, 2031.220, 2031.230, 2031.240, and 2031.280.

5 (2) The party's failure to serve a timely response was the result of mistake,
6 inadvertence, or excusable neglect.

7 (b) The party making the demand may move for an order compelling response to
8 the inspection demand.

9 (c) The court shall impose a monetary sanction under Chapter 7 (commencing
10 with Section 2023.010) against any party, person, or attorney who unsuccessfully
11 makes or opposes a motion to compel a response to an inspection demand, unless
12 it finds that the one subject to the sanction acted with substantial justification or
13 that other circumstances make the imposition of the sanction unjust. If a party then
14 fails to obey the order compelling a response, the court may make those orders that
15 are just, including the imposition of an issue sanction, an evidence sanction, or a
16 terminating sanction under Chapter 7 (commencing with Section 2023.010). In
17 lieu of or in addition to that sanction, the court may impose a monetary sanction
18 under Chapter 7 (commencing with Section 2023.010).

19 **Comment.** Subdivision (a) of Section 2031.300 continues the first paragraph of former Section
20 2031(l) without substantive change.

21 Subdivision (b) continues the first sentence of the second paragraph of former Section 2031(l)
22 without change.

23 Subdivision (c) continues the second, third, and fourth sentences of the second paragraph of
24 former Section 2030(l) without change, except to conform the cross-references.

25 **§ 2031.310. Motion to compel further response to inspection demand**

26 2031.310. (a) On receipt of a response to an inspection demand, the party
27 demanding an inspection may move for an order compelling further response to
28 the demand if the demanding party deems that any of the following apply:

29 (1) A statement of compliance with the demand is incomplete.

30 (2) A representation of inability to comply is inadequate, incomplete, or evasive.

31 (3) An objection in the response is without merit or too general.

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

33 (1) The motion shall set forth specific facts showing good cause justifying the
34 discovery sought by the inspection demand.

35 (2) The motion shall be accompanied by a meet and confer declaration under
36 Section 2016.040.

37 (c) Unless notice of this motion is given within 45 days of the service of the
38 response, or any supplemental response, or on or before any specific later date to
39 which the demanding party and the responding party have agreed in writing, the
40 demanding party waives any right to compel a further response to the inspection
41 demand.

42 (d) The court shall impose a monetary sanction under Chapter 7 (commencing
43 with Section 2023.010) against any party, person, or attorney who unsuccessfully

1 makes or opposes a motion to compel further response to an inspection demand,
2 unless it finds that the one subject to the sanction acted with substantial
3 justification or that other circumstances make the imposition of the sanction
4 unjust.

5 (e) If a party fails to obey an order compelling further response, the court may
6 make those orders that are just, including the imposition of an issue sanction, an
7 evidence sanction, or a terminating sanction under Chapter 7 (commencing with
8 Section 2023.010). In lieu of or in addition to that sanction, the court may impose
9 a monetary sanction under Chapter 7 (commencing with Section 2023.010).

10 **Comment.** Subdivision (a) of Section 2031.310 continues the first sentence of former Section
11 2031(m) without substantive change.

12 Subdivision (b) continues the second sentence of former Section 2031(m) without substantive
13 change.

14 Subdivision (c) continues the second paragraph of former Section 2031(m) without change.

15 Subdivision (d) continues the third paragraph of former Section 2031(m) without change,
16 except to conform the cross-reference.

17 Subdivision (e) continues the fourth paragraph of former Section 2031(m) without change,
18 except to conform the cross-references.

19 **§ 2031.320. Motion to compel compliance with inspection demand**

20 2031.320. (a) If a party filing a response to a demand for inspection under
21 Section 2031.210, 2031.220, 2031.230, 2031.240, and 2031.280 thereafter fails to
22 permit the inspection in accordance with that party's statement of compliance, the
23 party demanding the inspection may move for an order compelling compliance.

24 (b) The court shall impose a monetary sanction under Chapter 7 (commencing
25 with Section 2023.010) against any party, person, or attorney who unsuccessfully
26 makes or opposes a motion to compel compliance with an inspection demand,
27 unless it finds that the one subject to the sanction acted with substantial
28 justification or that other circumstances make the imposition of the sanction
29 unjust.

30 (c) If a party then fails to obey an order compelling inspection, the court may
31 make those orders that are just, including the imposition of an issue sanction, an
32 evidence sanction, or a terminating sanction under Chapter 7 (commencing with
33 Section 2023.010). In lieu of or in addition to that sanction, the court may impose
34 a monetary sanction under Chapter 7 (commencing with Section 2023.010).

35 **Comment.** Subdivision (a) of Section 2031.320 continues the first paragraph of former Section
36 2031(n) without change, except to conform the cross-reference.

37 Subdivision (b) continues the second paragraph of former Section 2031(n) without change,
38 except to conform the cross-reference.

39 Subdivision (c) continues the third paragraph of former Section 2031(n) without change, except
40 to conform the cross-references.

1 Article 3. Inspection and Production of Documents and
2 Other Property in Specific Contexts

3 **§ 2031.500. Disclosure of written evidence relating to land boundary or validity of state**
4 **patent or grant**

5 2031.500. (a) In any action, regardless of who is the moving party, where the
6 boundary of land patented or otherwise granted by the state is in dispute, or the
7 validity of any state patent or grant dated before 1950 is in dispute, all parties shall
8 have the duty to disclose to all opposing parties all nonprivileged relevant written
9 evidence then known and available, including evidence against interest, relating to
10 the above issues.

11 (b) This evidence shall be disclosed within 120 days after the filing with the
12 court of proof of service upon all named defendants. Thereafter, the parties shall
13 have the continuing duty to make all subsequently discovered relevant and
14 nonprivileged written evidence available to the opposing parties.

15 **Comment.** Subdivision (a) of Section 2031.500 continues the first sentence of former Section
16 2031.5 without substantive change.

17 Subdivision (b) continues the second and third sentences of former Section 2031.5 without
18 change.

19 CHAPTER 15. PHYSICAL OR MENTAL EXAMINATION

20 Article 1. General Provisions

21 **§ 2032.010. Effect of chapter**

22 2032.010. (a) Nothing in this chapter affects tests under the Uniform Act on
23 Blood Tests to Determine Paternity (Chapter 2 (commencing with Section 7550)
24 of Part 2 of Division 12 of the Family Code).

25 (b) Nothing in this chapter requires the disclosure of the identity of an expert
26 consulted by an attorney in order to make the certification required in an action for
27 professional negligence under Sections 411.30 and 411.35.

28 **Comment.** Subdivision (a) of Section 2032.010 continues the third sentence of former Section
29 2032(b) without change, except to replace “section” with “chapter.”

30 Subdivision (b) continues former Section 2032(k) without substantive change.

31 **§ 2032.020. Physical or mental examination**

32 2032.020. (a) Any party may obtain discovery, subject to the restrictions set
33 forth in Chapter 5 (commencing with Section 2019.010), by means of a physical or
34 mental examination of (1) a party to the action, (2) an agent of any party, or (3) a
35 natural person in the custody or under the legal control of a party, in any action in
36 which the mental or physical condition (including the blood group) of that party or
37 other person is in controversy in the action.

38 (b) A physical examination conducted under this chapter shall be performed only
39 by a licensed physician or other appropriate licensed health care practitioner.

1 (c) A mental examination conducted under this chapter shall be performed only
2 by a licensed physician, or by a licensed clinical psychologist who holds a doctoral
3 degree in psychology and has had at least five years of postgraduate experience in
4 the diagnosis of emotional and mental disorders.

5 **Comment.** Subdivision (a) of Section 2032.020 continues former Section 2032(a) without
6 change, except to conform the cross-reference.


7 Subdivision (b) continues the first sentence of former Section 2032(b) without change, except
8 to replace “section” with “chapter.”

9 Subdivision (c) continues the second sentence of former Section 2032(b) without change,
10 except to replace “section” with “chapter.”

11 **§ 2032.030. Alternative procedures and restrictions**

12 2032.030. In lieu of the procedures and restrictions specified in Article 2
13 (commencing with Section 2032.210) and Article 3 (commencing with Section
14 2032.310), any physical or mental examination may be arranged by, and carried
15 out under, a written agreement of the parties.

16 **Comment.** Section 2032.030 continues former Section 2032(e) without change, except to
17 conform the cross-references.

18  **Note.** Section 2032(e) (proposed Section 2032.030) appears unnecessary in light of Section
19 2021 (proposed Section 2016.030), which permits parties to modify discovery procedures by
20 stipulation unless the court orders otherwise. The Commission solicits comment on whether
21 Section 2032.030 should be deleted as redundant. If so, proposed Sections 2032.410 and
22 2032.610 should be revised to refer to Section 2016.030, instead of Section 2032.030.

23 Article 2. Physical Examination of Personal Injury Plaintiff

24 **§ 2032.210. “Plaintiff” and “defendant” defined**

25 2032.210. As used in this article, “plaintiff” includes a cross-complainant, and
26 “defendant” includes a cross-defendant.

27 **Comment.** Section 2032.210 continues former Section 2032(c)(1) without substantive change.

28 **§ 2032.220. Demand for physical examination of personal injury plaintiff**

29 2032.220. (a) In any case in which a plaintiff is seeking recovery for personal
30 injuries, any defendant may demand one physical examination of the plaintiff, if
31 both of the following conditions are satisfied:

32 (1) The examination does not include any diagnostic test or procedure that is
33 painful, protracted, or intrusive.

34 (2) The examination is conducted at a location within 75 miles of the residence
35 of the examinee.

36 (b) A defendant may make a demand under this article without leave of court
37 after that defendant has been served or has appeared in the action, whichever
38 occurs first.

1 (c) A demand under subdivision (a) shall specify the time, place, manner,
2 conditions, scope, and nature of the examination, as well as the identity and the
3 specialty, if any, of the physician who will perform the examination.

4 (d) A physical examination demanded under subdivision (a) shall be scheduled
5 for a date that is at least 30 days after service of the demand. On motion of the
6 party demanding the examination, the court may shorten this time.

7 (e) The defendant shall serve a copy of the demand under subdivision (a) on the
8 plaintiff and on all other parties who have appeared in the action.

9 **Comment.** Subdivision (a) of Section 2032.220 continues the first sentence of former Section
10 2032(c)(2) without substantive change.

11 Subdivision (b) continues the second sentence of former Section 2032(c)(2) without substantive
12 change.

13 Subdivision (c) continues the third sentence of former Section 2032(c)(2) without substantive
14 change.

15 Subdivision (d) continues former Section 2032(c)(3) without substantive change.

16 Subdivision (e) continues former Section 2032(c)(4) without substantive change.

17 **§ 2032.230. Response to demand for physical examination of personal injury plaintiff**

18 2032.230. (a) The plaintiff to whom a demand for a physical examination under
19 this article is directed shall respond to the demand by a written statement that the
20 examinee will comply with the demand as stated, will comply with the demand as
21 specifically modified by the plaintiff, or will refuse, for reasons specified in the
22 response, to submit to the demanded physical examination.

23 (b) Within 20 days after service of the demand the plaintiff to whom the demand
24 is directed shall serve the original of the response to it on the defendant making the
25 demand, and a copy of the response on all other parties who have appeared in the
26 action. On motion of the defendant making the demand, the court may shorten the
27 time for response. On motion of the plaintiff to whom the demand is directed, the
28 court may extend the time for response.

29 **Comment.** Subdivision (a) of Section 2032.230 continues the first sentence of former Section
30 2032(c)(5) without substantive change.

31 Subdivision (b) continues the second sentence of former Section 2032(c)(5) without substantive
32 change.

33 **§ 2032.240. Failure to respond to demand for physical examination of personal injury**
34 **plaintiff**

35 2032.240. (a) If a plaintiff to whom a demand for a physical examination under
36 this article is directed fails to serve a timely response to it, that plaintiff waives any
37 objection to the demand. The court, on motion, may relieve that plaintiff from this
38 waiver on its determination that both of the following conditions are satisfied:

39 (1) The plaintiff has subsequently served a response that is in substantial
40 compliance with Section 2032.230.

41 (2) The plaintiff's failure to serve a timely response was the result of mistake,
42 inadvertence, or excusable neglect.

1 (b) The defendant may move for an order compelling response and compliance
2 with a demand for a physical examination.

3 (c) The court shall impose a monetary sanction under Chapter 7 (commencing
4 with Section 2023.010) against any party, person, or attorney who unsuccessfully
5 makes or opposes a motion to compel response and compliance with a demand for
6 a physical examination, unless it finds that the one subject to the sanction acted
7 with substantial justification or that other circumstances make the imposition of
8 the sanction unjust.

9 (d) If a plaintiff then fails to obey the order compelling response and
10 compliance, the court may make those orders that are just, including the
11 imposition of an issue sanction, an evidence sanction, or a terminating sanction
12 under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to
13 that sanction the court may impose a monetary sanction under Chapter 7
14 (commencing with Section 2023.010).

15 **Comment.** Subdivision (a) of Section 2032.240 continues the first paragraph of former Section
16 2032(c)(6) without substantive change.

17 Subdivision (b) continues the first sentence of the second paragraph of former Section
18 2032(c)(6) without change.

19 Subdivision (c) continues the second sentence of the second paragraph of former Section
20 2032(c)(6) without change, except to conform the cross-reference.

21 Subdivision (d) continues the third paragraph of former Section 2032(c)(6) without change,
22 except to conform the cross-references.

23 **§ 2032.250. Motion to compel compliance with demand for physical examination after**
24 **receiving response of personal injury plaintiff**

25 2032.250. (a) If a defendant who has demanded a physical examination under
26 this article, on receipt of the plaintiff's response to that demand, deems that any
27 modification of the demand, or any refusal to submit to the physical examination
28 is unwarranted, that defendant may move for an order compelling compliance with
29 the demand. This motion shall be accompanied by a meet and confer declaration
30 under Section 2016.040.

31 (b) The court shall impose a monetary sanction under Chapter 7 (commencing
32 with Section 2023.010) against any party, person, or attorney who unsuccessfully
33 makes or opposes a motion to compel compliance with a demand for a physical
34 examination, unless it finds that the one subject to the sanction acted with
35 substantial justification or that other circumstances make the imposition of the
36 sanction unjust.

37 **Comment.** Subdivision (a) of Section 2032.250 continues the first paragraph of former Section
38 2032(c)(7) without substantive change.

39 Subdivision (b) continues the second paragraph of former Section 2032(c)(7) without change,
40 except to conform the cross-reference.

41 **§ 2032.260. Retention of original demand for physical examination and original response**

42 2032.260. (a) The demand for a physical examination under this article and the
43 response to it shall not be filed with the court.

1 (b) The defendant shall retain both the original of the demand, with the original
2 proof of service affixed to it, and the original response until six months after final
3 disposition of the action. At that time, the original may be destroyed, unless the
4 court, on motion of any party and for good cause shown, orders that the originals
5 be preserved for a longer period.

6 **Comment.** Subdivision (a) of Section 2032.260 continues the first sentence of former Section
7 2032(c)(8) without substantive change.

8 Subdivision (b) continues the second sentence of former Section 2032(c)(8) without change.

9 Article 3. Motion for Physical or Mental Examination

10 § 2032.310. Motion for physical or mental examination

11 2032.310. (a) If any party desires to obtain discovery by a physical examination
12 other than that described in Article 2 (commencing with Section 2032.210), or by
13 a mental examination, the party shall obtain leave of court.

14 (b) A motion for an examination under subdivision (a) shall specify the time,
15 place, manner, conditions, scope, and nature of the examination, as well as the
16 identity and the specialty, if any, of the person or persons who will perform the
17 examination. The motion shall be accompanied by a meet and confer declaration
18 under Section 2016.040.

19 (c) Notice of the motion shall be served on the person to be examined and on all
20 parties who have appeared in the action.

21 **Comment.** Subdivision (a) of Section 2032.310 continues the first sentence of former Section
22 2032(d) without change, except to conform the cross-reference.

23 Subdivision (b) continues the second and third sentences of former Section 2032(d) without
24 substantive change.

25 Subdivision (c) continues the fourth sentence of former Section 2032(d) without change.

26 § 2032.320. Order on motion for physical or mental examination

27 2032.320. (a) The court shall grant a motion for a physical or mental
28 examination under Section 2032.310 only for good cause shown.

29 (b) If a party stipulates as provided in subdivision (c), the court shall not order a
30 mental examination of a person for whose personal injuries a recovery is being
31 sought except on a showing of exceptional circumstances.

32 (c) A stipulation by a party under this subdivision shall include both of the
33 following:

34 (1) A stipulation that no claim is being made for mental and emotional distress
35 over and above that usually associated with the physical injuries claimed.

36 (2) A stipulation that no expert testimony regarding this usual mental and
37 emotional distress will be presented at trial in support of the claim for damages.

38 (d) An order granting a physical or mental examination shall specify the person
39 or persons who may perform the examination, as well as the time, place, manner,
40 diagnostic tests and procedures, conditions, scope, and nature of the examination.

1 (e) If the place of the examination is more than 75 miles from the residence of
2 the person to be examined, an order to submit to it shall be entered only if both of
3 the following conditions are satisfied:

4 (1) The court determines that there is good cause for the travel involved.

5 (2) The order is conditioned on the advancement by the moving party of the
6 reasonable expenses and costs to the examinee for travel to the place of
7 examination.

8 **Comment.** Subdivision (a) of Section 2032.320 continues the first sentence of the second
9 paragraph of former Section 2032(d) without substantive change.

10 Subdivisions (b) and (c) continue the second sentence of the second paragraph of former
11 Section 2032(d) without substantive change.

12 Subdivision (d) continues the third sentence of the second paragraph of former Section 2032(d)
13 without substantive change.

14 Subdivision (e) continues the fourth sentence of the second paragraph of former Section
15 2032(d) without substantive change.

16 Article 4. Failure To Submit To or Produce Another for
17 Physical or Mental Examination

18 **§ 2032.410. Failure to submit to physical or mental examination**

19 2032.410. If a party is required to submit to a physical or mental examination
20 under Articles 2 (commencing with Section 2032.210) or 3 (commencing with
21 Section 2032.310), or under Section 2032.030, but fails to do so, the court, on
22 motion of the party entitled to the examination, may make those orders that are
23 just, including the imposition of an issue sanction, an evidence sanction, or a
24 terminating sanction under Chapter 7 (commencing with Section 2023.010). In
25 lieu of or in addition to that sanction, the court may, on motion of the party,
26 impose a monetary sanction under Chapter 7 (commencing with Section
27 2023.010).

28 **Comment.** Section 2032.410 continues the first paragraph of former Section 2032(f) without
29 substantive change.

30 **§ 2032.420. Failure to produce another for physical or mental examination**

31 2032.420. If a party is required to produce another for a physical or mental
32 examination under Articles 2 (commencing with Section 2032.210) or 3
33 (commencing with Section 2032.310), or under Section 2032.030, but fails to do
34 so, the court, on motion of the party entitled to the examination, may make those
35 orders that are just, including the imposition of an issue sanction, an evidence
36 sanction, or a terminating sanction under Chapter 7 (commencing with Section
37 2023.010), unless the party failing to comply demonstrates an inability to produce
38 that person for examination. In lieu of or in addition to that sanction, the court may
39 impose a monetary sanction under Chapter 7 (commencing with Section
40 2023.010).

1 **Comment.** Section 2032.420 continues the second paragraph of former Section 2032(f) without
2 substantive change.

3 Article 5. Conduct of Examination

4 § 2032.510. Observation of examination by attorney or representative

5 2032.510. (a) The attorney for the examinee or for a party producing the
6 examinee, or that attorney's representative, shall be permitted to attend and
7 observe any physical examination conducted for discovery purposes, and to record
8 stenographically or by audiotape any words spoken to or by the examinee during
9 any phase of the examination.

10 (b) The observer under subdivision (a) may monitor the examination, but shall
11 not participate in or disrupt it.

12 (c) If an attorney's representative is to serve as the observer, the representative
13 shall be authorized to so act by a writing subscribed by the attorney which
14 identifies the representative.

15 (d) If in the judgment of the observer the examiner becomes abusive to the
16 examinee or undertakes to engage in unauthorized diagnostic tests and procedures,
17 the observer may suspend it to enable the party being examined or producing the
18 examinee to make a motion for a protective order.

19 (e) If the observer begins to participate in or disrupt the examination, the person
20 conducting the physical examination may suspend the examination to enable the
21 party at whose instance it is being conducted to move for a protective order.

22 (f) The court shall impose a monetary sanction under Chapter 7 (commencing
23 with Section 2023.010) against any party, person, or attorney who unsuccessfully
24 makes or opposes a motion for a protective order [under this section], unless it
25 finds that the one subject to the sanction acted with substantial justification or that
26 other circumstances make the imposition of the sanction unjust.

27 **Comment.** Subdivision (a) of Section 2032.510 continues the first sentence of former Section
28 2032(g)(1) without change.

29 Subdivision (b) continues the second sentence of former Section 2032(g)(1) without substantive
30 change.

31 Subdivision (c) continues the third sentence of the first paragraph of former Section 2032(g)(1)
32 without change.

33 Subdivision (d) continues the first sentence of the second paragraph of former Section
34 2032(g)(1) without change.

35 Subdivision (e) continues the second sentence of the second paragraph of former Section
36 2032(g)(1) without change.

37 Subdivision (f) continues the third paragraph of former Section 2032(g)(1) without substantive
38 change.

39 ☞ **Note.** The third paragraph of Section 2032(g)(1) states: "The court shall impose a monetary
40 sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or
41 opposes a *motion for a protective order*, unless it finds that the one subject to the sanction acted
42 with substantial justification or that other circumstances make the imposition of the sanction
43 unjust." (Emphasis added.) From this language, it is unclear whether the provision is meant to
44 apply to any motion for a protective order, or only to a motion relating to observation of a

1 physical or mental examination. The Commission presumes the latter, because otherwise
2 language in other discovery provisions would be surplusage. The Commission solicits comment
3 on whether the reference to “protective order” should be changed to “protective order under this
4 section,” as shown in brackets in proposed Section 2032.510(f).

5 **§ 2032.520. X-rays**

6 2032.520. If an examinee submits or authorizes access to X-rays of any area of
7 his or her body for inspection by the examining physician, no additional X-rays of
8 that area may be taken by the examining physician except with consent of the
9 examinee or on order of the court for good cause shown.

10 **Comment.** Section 2032.520 continues the fourth paragraph of former Section 2032(g)(1)
11 without substantive change.

12 **§ 2032.530. Recording of mental examination**

13 2032.530. (a) The examiner and examinee shall have the right to record a mental
14 examination on audiotape.

15 (b) Nothing in this title shall be construed to alter, amend, or affect existing case
16 law with respect to the presence of the attorney for the examinee or other persons
17 during the examination by agreement or court order.

18 **Comment.** Subdivision (a) of Section 2032.530 continues the first sentence of former Section
19 2032(g)(2) without substantive change.

20 Subdivision (b) continues the second sentence of former Section 2032(g)(2) without substantive
21 change.

22 **Article 6. Reports of Examination**

23 **§ 2032.610. Delivery of reports to examinee or party who produced examinee**

24 2032.610. (a) If a party submits to, or produces another for, a physical or mental
25 examination in compliance with a demand under Article 2 (commencing with
26 Section 2032.210), an order of court under Article 3 (commencing with Section
27 2032.310), or an agreement under Section 2032.030, that party has the option of
28 making a written demand that the party at whose instance the examination was
29 made deliver both of the following to the demanding party:

30 (1) A copy of a detailed written report setting out the history, examinations,
31 findings, including the results of all tests made, diagnoses, prognoses, and
32 conclusions of the examiner.

33 (2) A copy of reports of all earlier examinations of the same condition of the
34 examinee made by that or any other examiner.

35 (b) If the option under subdivision (a) is exercised, a copy of the requested
36 reports shall be delivered within 30 days after service of the demand, or within 15
37 days of trial, whichever is earlier.

38 (c) In the circumstances described in subdivision (a), the protection for work
39 product under Chapter 4 (commencing with Section 2018.010) is waived, both for
40 the examiner’s writings and reports and to the taking of the examiner’s testimony.

1 **Comment.** Subdivision (a) of Section 2032.610 continues the first sentence of former Section
2 2032(h) without substantive change.

3 Subdivision (b) continues the second sentence of former Section 2032(h) without substantive
4 change.

5 Subdivision (c) continues the third sentence of former Section 2032(h) without substantive
6 change.

7 **§ 2032.620. Failure to deliver report to examinee or party who produced examinee**

8 2032.620. (a) If the party at whose instance an examination was made fails to
9 make a timely delivery of the reports demanded under Section 2032.610, the
10 demanding party may move for an order compelling their delivery. This motion
11 shall be accompanied by a meet and confer declaration under Section 2016.040.


12 (b) The court shall impose a monetary sanction under Chapter 7 (commencing
13 with Section 2023.010) against any party, person, or attorney who unsuccessfully
14 makes or opposes a motion to compel delivery of medical reports [under this
15 section], unless it finds that the one subject to the sanction acted with substantial
16 justification or that other circumstances make the imposition of the sanction
17 unjust.

18 (c) If a party then fails to obey an order compelling delivery of demanded
19 medical reports, the court may make those orders that are just, including the
20 imposition of an issue sanction, an evidence sanction, or a terminating sanction
21 under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to
22 those sanctions, the court may impose a monetary sanction under Chapter 7
23 (commencing with Section 2023.010). The court shall exclude at trial the
24 testimony of any examiner whose report has not been provided by a party.

25 **Comment.** Subdivision (a) of Section 2032.620 continues the second paragraph of former
26 Section 2032(h) without substantive change.

27 Subdivision (b) continues the third paragraph of former Section 2032(h) without substantive
28 change.

29 Subdivision (c) continues the fourth paragraph of former Section 2032(h) without change,
30 except to conform the cross-references.

31  **Note.** The third paragraph of Section 2032(h) states: “The court shall impose a monetary
32 sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or
33 opposes *a motion to compel delivery of medical reports*, unless it finds that the one subject to the
34 sanction acted with substantial justification or that other circumstances make the imposition of the
35 sanction unjust.” (Emphasis added.) From this language, it is unclear whether the provision is
36 meant to apply to any motion to compel delivery of medical reports, or only to a motion
37 stemming from the requirements of the first paragraph of Section 2032(h) (proposed Section
38 2032.610). The Commission presumes the latter, because otherwise language in Section 2032(j)
39 would be surplusage. The Commission solicits comment on whether the reference to “motion to
40 compel delivery of medical reports” should be changed to “motion to compel delivery of medical
41 reports under this section,” as shown in brackets in proposed Section 2032.620(b)

42 **§ 2032.630. Waiver**

43 2032.630. By demanding and obtaining a report of a physical or mental
44 examination under Section 2032.610 or 2032.620, or by taking the deposition of
45 the examiner, other than under Article 3 (commencing with Section 2034.410) of

1 Chapter 18, the party who submitted to, or produced another for, a physical or
2 mental examination waives in the pending action, and in any other action
3 involving the same controversy, any privilege, as well as any protection for work
4 product under Chapter 4 (commencing with Section 2018.010), that the party or
5 other examinee may have regarding reports and writings as well as the testimony
6 of every other physician, psychologist, or licensed health care practitioner who has
7 examined or may thereafter examine the party or other examinee in respect of the
8 same physical or mental condition.

9 **Comment.** Section 2032.630 continues former Section 2302(i) without change, except to
10 conform the cross-references.

11 **§ 2032.640. Exchange of other reports**

12 2032.640. A party receiving a demand for a report under Section 2032.610 is
13 entitled at the time of compliance to receive in exchange a copy of any existing
14 written report of any examination of the same condition by any other physician,
15 psychologist, or licensed health care practitioner. In addition, that party is entitled
16 to receive promptly any later report of any previous or subsequent examination of
17 the same condition, by any physician, psychologist, or licensed health care
18 practitioner.

19 **Comment.** Section 2032.640 continues the first paragraph of former Section 2032(j) without
20 change, except to conform the cross-reference.

21 **§ 2032.650. Failure to exchange other reports**

22 2032.650. (a) If a party who has demanded and received delivery of medical
23 reports under Section 2032.610 fails to deliver existing or later reports of previous
24 or subsequent examinations under Section 2032.640, a party who has complied
25 with Section 2032.610 may move for an order compelling delivery of medical
26 reports. This motion shall be accompanied by a meet and confer declaration under
27 Section 2016.040.


28 (b) The court shall impose a monetary sanction under Chapter 7 (commencing
29 with Section 2023.010) against any party, person, or attorney who unsuccessfully
30 makes or opposes a motion to compel delivery of medical reports [under this
31 section], unless it finds that the one subject to the sanction acted with substantial
32 justification or that other circumstances make the imposition of the sanction
33 unjust.

34 (c) If a party then fails to obey an order compelling delivery of medical reports,
35 the court may make those orders that are just, including the imposition of an issue
36 sanction, an evidence sanction, or a terminating sanction under Chapter 7
37 (commencing with Section 2023.010). In lieu of or in addition to the sanction, the
38 court may impose a monetary sanction under Chapter 7 (commencing with Section
39 2023.010). The court shall exclude at trial the testimony of any health care
40 practitioner whose report has not been provided by a party ordered to do so by the
41 court.

1 **Comment.** Subdivision (a) of Section 2032.650 continues the second paragraph of former
2 Section 2032(j) without substantive change.

3 Subdivision (b) continues the third paragraph of former Section 2032(j) without substantive
4 change.

5 Subdivision (c) continues the fourth paragraph of former Section 2032(j) without change,
6 except to conform the cross-references.

7  **Note.** The third paragraph of Section 2032(j) states: “The court shall impose a monetary
8 sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or
9 opposes *a motion to compel delivery of medical reports*, unless it finds that the one subject to the
10 sanction acted with substantial justification or that other circumstances make the imposition of the
11 sanction unjust.” (Emphasis added.) From this language, it is unclear whether the provision is
12 meant to apply to any motion to compel delivery of medical reports, or only to a motion
13 stemming from the requirements of the first paragraph of Section 2032(j) (proposed Section
14 2032.640). The Commission presumes the latter, because otherwise language in Section 2032(h)
15 would be surplusage. The Commission solicits comment on whether the reference to “motion to
16 compel delivery of medical reports” should be changed to “motion to compel delivery of medical
17 reports under this section,” as shown in brackets in proposed Section 2032.650(b).

18 CHAPTER 16. REQUESTS FOR ADMISSION

19 Article 1. Requests For Admission

20 § 2033.010. Requests for admission

21 2033.010. Any party may obtain discovery within the scope delimited by
22 Chapters 2 (commencing with Section 2017.010) and 3 (commencing with Section
23 2017.510), and subject to the restrictions set forth in Chapter 5 (commencing with
24 Section 2019.010), by a written request that any other party to the action admit the
25 genuineness of specified documents, or the truth of specified matters of fact,
26 opinion relating to fact, or application of law to fact. A request for admission may
27 relate to a matter that is in controversy between the parties.

28 **Comment.** Section 2033.010 continues former Section 2033(a) without change, except to
29 conform the cross-references.

30 § 2033.020. Time of making requests for admission

31 2033.020. (a) A defendant may make requests for admission by a party without
32 leave of court at any time.

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

37 (c) Notwithstanding subdivision (b), on motion with or without notice, the court,
38 for good cause shown, may grant leave to a plaintiff to make requests for
39 admission at an earlier time.

40 **Comment.** Subdivision (a) of Section 2033.020 continues the first sentence of former Section
41 2033(b) without change.

42 Subdivision (b) continues the second sentence of former Section 2033(b) without change.

1 Subdivision (c) continues the third sentence of former Section 2033(b) without substantive
2 change.

3 **§ 2033.030. Number of requests for admission**

4 2033.030. (a) No party shall request, as a matter of right, that any other party
5 admit more than 35 matters that do not relate to the genuineness of documents. If
6 the initial set of admission requests does not exhaust this limit, the balance may be
7 requested in subsequent sets.

8 (b) Unless a declaration as described in Section 2033.050 has been made, a party
9 need only respond to the first 35 admission requests served that do not relate to the
10 genuineness of documents, if that party states an objection to the balance under
11 Section 2033.230 on the ground that the limit has been exceeded.

12 (c) The number of requests for admission of the genuineness of documents is not
13 limited except as justice requires to protect the responding party from unwarranted
14 annoyance, embarrassment, oppression, or undue burden and expense.

15 **Comment.** Subdivision (a) of Section 2033.030 continues the first sentence of former Section
16 2033(c)(1) without change.

17 Subdivision (b) continues the second sentence of former Section 2033(c)(1) without change,
18 except to conform the cross-references.

19 Subdivision (c) continues the second paragraph of former Section 2033(c)(1) without change.

20 **§ 2033.040. Extra requests for admission**

21 2033.040. (a) Subject to the right of the responding party to seek a protective
22 order under Section 2033.080, any party who attaches a supporting declaration as
23 described in Section 2033.050 may request a greater number of admissions by
24 another party if the greater number is warranted by the complexity or the quantity
25 of the existing and potential issues in the particular case.

26 (b) If the responding party seeks a protective order on the ground that the
27 number of requests for admission is unwarranted, the propounding party shall have
28 the burden of justifying the number of requests for admission.

29 **Comment.** Subdivision (a) of Section 2033.040 continues the first paragraph of former Section
30 2033(c)(2) without change, except to conform the cross-references.

31 Subdivision (b) continues the second paragraph of former Section 2033(c)(2) without change.

32 **§ 2033.050. Declaration in support of extra requests for admission**

33 2033.050. Any party who is requesting or who has already requested more than
34 35 admissions not relating to the genuineness of documents by any other party
35 shall attach to each set of requests for admissions a declaration containing
36 substantially the following words:

37 **DECLARATION FOR ADDITIONAL DISCOVERY**

38 I, _____, declare:

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

1 2. I am propounding to _____ the attached set of requests for admission.

2 3. This set of requests for admission will cause the total number of requests
3 propounded to the party to whom they are directed to exceed the number of
4 requests permitted by Section 2033.030 of the Code of Civil Procedure.

5 4. I have previously propounded a total of _____ requests for admission to
6 this party.

7 5. This set of requests for admission contains a total of _____ requests.

8 6. I am familiar with the issues and the previous discovery conducted by all of
9 the parties in this case.

10 7. I have personally examined each of the requests in this set of requests for
11 admission.

12 8. This number of requests for admission is warranted under Section 2033.040 of
13 the Code of Civil Procedure because _____. (Here state the reasons why the
14 complexity or the quantity of issues in the instant lawsuit warrant this number of
15 requests for admission.)

16 9. None of the requests in this set of requests is being propounded for any
17 improper purpose, such as to harass the party, or the attorney for the party, to
18 whom it is directed, or to cause unnecessary delay or needless increase in the cost
19 of litigation.

20 I declare under penalty of perjury under the laws of California that the foregoing
21 is true and correct, and that this declaration was executed on _____.

22 _____
23 (Signature)
24 Attorney for _____

25 **Comment.** Section 2033.050 continues former Section 2033(c)(3) without change, except to
26 conform the cross-references.

27 **§ 2033.060. Form of requests for admission**

28 2033.060. (a) A party requesting admissions shall number each set of requests
29 consecutively.

30 (b) In the first paragraph immediately below the title of the case, there shall
31 appear the identity of the party requesting the admissions, the set number, and the
32 identity of the responding party.

33 (c) Each request for admission in a set shall be separately set forth and identified
34 by letter or number.

35 (d) Each request for admission shall be full and complete in and of itself. No
36 preface or instruction shall be included with a set of admission requests unless it
37 has been approved under Chapter 17 (commencing with Section 2033.510).

38 (e) Any term specially defined in a request for admission shall be typed with all
39 letters capitalized whenever the term appears.

1 (f) No request for admission shall contain subparts, or a compound, conjunctive,
2 or disjunctive request unless it has been approved under Chapter 17 (commencing
3 with Section 2033.510).

4 (g) A party requesting an admission of the genuineness of any documents shall
5 attach copies of those documents to the requests, and shall make the original of
6 those documents available for inspection on demand by the party to whom the
7 requests for admission are directed.

8 (h) No party shall combine in a single document requests for admission with any
9 other method of discovery.

10 **Comment.** Subdivision (a) of Section 2033.060 continues the first sentence of former Section
11 2033(c)(4) without change.

12 Subdivision (b) continues the second sentence of former Section 2033(c)(4) without substantive
13 change.

14 Subdivision (c) continues the third sentence of former Section 2033(c)(4) without change.

15 Subdivision (d) continues the first and second sentences of former Section 2033(c)(5) without
16 change, except to conform the cross-reference.

17 Subdivision (e) continues the third sentence of former Section 2033(c)(5) without change.

18 Subdivision (f) continues the fourth sentence of former Section 2033(c)(5) without change,
19 except to conform the cross-reference.

20 Subdivision (g) continues former Section 2033(c)(6) without change.

21 Subdivision (h) continues former Section 2033(c)(7) without change.

22 **§ 2033.070. Service of requests for admission**

23 2033.070. The party requesting admissions shall serve a copy of them on the
24 party to whom they are directed and on all other parties who have appeared in the
25 action.

26 **Comment.** Section 2033.070 continues former Section 2033(d) without change.

27 **§ 2033.080. Motion for protective order**

28 2033.080. (a) When requests for admission have been made, the responding
29 party may promptly move for a protective order. This motion shall be
30 accompanied by a meet and confer declaration under Section 2016.040.

31 (b) The court, for good cause shown, may make any order that justice requires to
32 protect any party from unwarranted annoyance, embarrassment, oppression, or
33 undue burden and expense. This protective order may include, but is not limited
34 to, one or more of the following directions:

35 (1) That the set of admission requests, or particular requests in the set, need not
36 be answered at all.

37 (2) That, contrary to the representations made in a declaration submitted under
38 Section 2033.050, the number of admission requests is unwarranted.

39 (3) That the time specified in Section 2033.250 to respond to the set of
40 admission requests, or to particular requests in the set, be extended.

41 (4) That a trade secret or other confidential research, development, or
42 commercial information not be admitted or be admitted only in a certain way.

1 (5) That some or all of the answers to requests for admission be sealed and
2 thereafter opened only on order of the court.

3 (c) If the motion for a protective order is denied in whole or in part, the court
4 may order that the responding party provide or permit the discovery against which
5 protection was sought on terms and conditions that are just.

6 (d) The court shall impose a monetary sanction under Chapter 7 (commencing
7 with Section 2023.010) against any party, person, or attorney who unsuccessfully
8 makes or opposes a motion for a protective order [under this section], unless it
9 finds that the one subject to the sanction acted with substantial justification or that
10 other circumstances make the imposition of the sanction unjust.

11 **Comment.** Subdivision (a) of Section 2033.080 continues the first paragraph of former Section
12 2033(e) without substantive change.

13 Subdivision (b) continues the second paragraph of former Section 2033(e) (including items (1)-
14 (5)) without change, except to conform the cross references.

15 Subdivision (c) continues the next-to-last paragraph of former Section 2033(e) without change.

16 Subdivision (d) continues the last paragraph of former Section 2033(e) without substantive
17 change.

18 ☞ **Note.** The fourth paragraph of Section 2033(e) states: “The court shall impose a monetary
19 sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or
20 opposes *a motion for a protective order*, unless it finds that the one subject to the sanction acted
21 with substantial justification or that other circumstances make the imposition of the sanction
22 unjust.” (Emphasis added.) From this language, it is unclear whether the provision is meant to
23 apply to any motion for a protective order, or only to a motion relating to requests for admission.
24 The Commission presumes the latter, because otherwise language in other discovery provisions
25 would be surplusage. The Commission solicits comment on whether the reference to “protective
26 order” should be changed to “protective order under this section,” as shown in brackets in Section
27 2033.080(d).

28 Article 2. Response to Requests For Admission

29 § 2033.210. Response to requests for admission

30 2033.210. (a) The party to whom requests for admission have been directed shall
31 respond in writing under oath separately to each request.

32 (b) Each response shall answer the substance of the requested admission, or set
33 forth an objection to the particular request.

34 (c) In the first paragraph of the response immediately below the title of the case,
35 there shall appear the identity of the responding party, the set number, and the
36 identity of the requesting party.

37 (d) Each answer or objection in the response shall bear the same identifying
38 number or letter and be in the same sequence as the corresponding request, but the
39 text of the particular request need not be repeated.

40 **Comment.** Subdivision (a) of Section 2033.210 continues the first sentence of the introductory
41 paragraph of former Section 2033(f) without change.

42 Subdivision (b) continues the second sentence of the introductory paragraph of former Section
43 2033(f) without change.

1 Subdivision (c) continues the third sentence of the introductory paragraph of former Section
2 2033(f) without change.

3 Subdivision (d) continues the fourth sentence of the introductory paragraph of former Section
4 2033(f) without change.

5 **§ 2033.220. Answer to request for admission**

6 2033.220. (a) Each answer in a response to requests for admission shall be as
7 complete and straightforward as the information reasonably available to the
8 responding party permits.

9 (b) Each answer shall:

10 (1) Admit so much of the matter involved in the request as is true, either as
11 expressed in the request itself or as reasonably and clearly qualified by the
12 responding party.

13 (2) Deny so much of the matter involved in the request as is untrue.

14 (3) Specify so much of the matter involved in the request as to the truth of which
15 the responding party lacks sufficient information or knowledge.

16 (c) If a responding party gives lack of information or knowledge as a reason for
17 a failure to admit all or part of a request for admission, that party shall state in the
18 answer that a reasonable inquiry concerning the matter in the particular request has
19 been made, and that the information known or readily obtainable is insufficient to
20 enable that party to admit the matter.

21 **Comment.** Subdivision (a) of Section 2033.220 continues the first sentence of former Section
22 2033(f)(1) without substantive change.

23 Subdivision (b) continues the second sentence of former Section 2033(f)(1) without substantive
24 change.

25 Subdivision (c) continues the third sentence of former Section 2033(f)(1) without change.

26 **§ 2033.230. Objection to request for admission**

27 2033.230. (a) If only a part of a request for admission is objectionable, the
28 remainder of the request shall be answered.

29 (b) If an objection is made to a request or to a part of a request, the specific
30 ground for the objection shall be set forth clearly in the response. If an objection is
31 based on a claim of privilege, the particular privilege invoked shall be clearly
32 stated. If an objection is based on a claim that the matter as to which an admission
33 is requested is protected work product under Chapter 4 (commencing with Section
34 2018.010), that claim shall be expressly asserted.

35 **Comment.** Subdivision (a) of Section 2033.230 continues the first sentence of former Section
36 2033(f)(2) without change.

37 Subdivision (b) continues the second, third, and fourth sentences of former Section 2033(f)(2)
38 without change, except to conform the cross-reference.

39 **§ 2033.240. Signing of response to requests for admission**

40 2033.240. (a) The party to whom the requests for admission are directed shall
41 sign the response under oath, unless the response contains only objections.

1 (b) If that party is a public or private corporation, or a partnership or association
2 or governmental agency, one of its officers or agents shall sign the response under
3 oath on behalf of that party. If the officer or agent signing the response on behalf
4 of that party is an attorney acting in that capacity for the party, that party waives
5 any lawyer-client privilege and any protection for work product under Chapter 4
6 (commencing with Section 2018.010) during any subsequent discovery from that
7 attorney concerning the identity of the sources of the information contained in the
8 response.

9 (c) The attorney for the responding party shall sign any response that contains an
10 objection.

11 **Comment.** Subdivision (a) of Section 2033.240 continues the first sentence of former Section
12 2033(g) without change.

13 Subdivision (b) continues the second and third sentences of former Section 2033(g) without
14 change, except to conform the cross-reference.

15 Subdivision (c) continues the fourth sentence of former Section 2033(g) without change.

16 **§ 2033.250. Service of response to requests for admission**

17 2033.250. Within 30 days after service of requests for admission, or in unlawful
18 detainer actions within five days after service of requests for admission, the party
19 to whom the requests are directed shall serve the original of the response to them
20 on the requesting party, and a copy of the response on all other parties who have
21 appeared, unless on motion of the requesting party the court has shortened the time
22 for response, or unless on motion of the responding party the court has extended
23 the time for response. In unlawful detainer actions, the party to whom the request
24 is directed shall have at least five days from the date of service to respond unless
25 on motion of the requesting party the court has shortened the time for response.

26 **Comment.** Section 2033.250 continues former Section 2033(h) without change.

27 **§ 2033.260. Agreement to extend time for service of response**

28 2033.260. (a) The party requesting admissions and the responding party may
29 agree to extend the time for service of a response to a set of admission requests, or
30 to particular requests in a set, to a date beyond that provided in Section 2033.250.

31 (b) This agreement may be informal, but it shall be confirmed in a writing that
32 specifies the extended date for service of a response.

33 (c) Unless this agreement expressly states otherwise, it is effective to preserve to
34 the responding party the right to respond to any request for admission to which the
35 agreement applies in any manner specified in Sections 2033.210, 2033.220, and
36 2033.230.

37 (d) Notice of this agreement shall be given by the responding party to all other
38 parties who were served with a copy of the request.

39 **Comment.** Subdivision (a) of Section 2033.260 continues the first sentence of former Section
40 2033(i) without change, except to conform the cross-reference.

41 Subdivision (b) continues the second sentence of former Section 2033(i) without change.

1 Subdivision (c) continues the third sentence of former Section 2033(i) without change, except
2 to conform the cross-reference.

3 Subdivision (d) continues the fourth sentence of former Section 2033(i) without change.

4 **§ 2033.270. Retention of original requests for admission and original response**

5 2033.270. (a) The requests for admission and the response to them shall not be
6 filed with the court.

7 (b) The party requesting admissions shall retain both the original of the requests
8 for admission, with the original proof of service affixed to them, and the original
9 of the sworn response until six months after final disposition of the action. At that
10 time, both originals may be destroyed, unless the court, on motion of any party and
11 for good cause shown, orders that the originals be preserved for a longer period.

12 **Comment.** Subdivision (a) of Section 2033.270 continues the first sentence of former Section
13 2033(j) without change.

14 Subdivision (b) continues the second and third sentences of former Section 2033(j) without
15 change.

16 **§ 2033.280. Failure to serve timely response**

17 2033.280. If a party to whom requests for admission are directed fails to serve a
18 timely response, the following rules apply:

19 (a) The party to whom the requests for admission are directed waives any
20 objection to the requests, including one based on privilege or on the protection for
21 work product under Chapter 4 (commencing with Section 2018.010). The court,
22 on motion, may relieve that party from this waiver on its determination that both
23 of the following conditions are satisfied:

24 (1) The party has subsequently served a response that is in substantial
25 compliance with Sections 2033.210, 2033.220, and 2033.230.

26 (2) The party's failure to serve a timely response was the result of mistake,
27 inadvertence, or excusable neglect.

28 (b) The requesting party may move for an order that the genuineness of any
29 documents and the truth of any matters specified in the requests be deemed
30 admitted, as well as for a monetary sanction under Chapter 7 (commencing with
31 Section 2023.010).

32 (c) The court shall make this order, unless it finds that the party to whom the
33 requests for admission have been directed has served, before the hearing on the
34 motion, a proposed response to the requests for admission that is in substantial
35 compliance with Section 2033.100. It is mandatory that the court impose a
36 monetary sanction under Chapter 7 (commencing with Section 2023.010) on the
37 party or attorney, or both, whose failure to serve a timely response to requests for
38 admission necessitated this motion.

39 **Comment.** Subdivision (a) of Section 2033.280 continues the first paragraph of former Section
40 2033(k) without substantive change.

41 Subdivision (b) continues the first sentence of the second paragraph of former Section 2033(k)
42 without change, except to conform the cross-reference.

1 Subdivision (c) continues the second and third sentences of the second paragraph of former
2 Section 2033(k) without change, except to conform the cross-references.

3 **§ 2033.290. Motion to compel further response**

4 2033.290. (a) On receipt of a response to requests for admissions, the party
5 requesting admissions may move for an order compelling a further response if that
6 party deems that either or both of the following apply:

7 (1) An answer to a particular request is evasive or incomplete.

8 (2) An objection to a particular request is without merit or too general.

9 (b) A motion under subdivision (a) shall be accompanied by a meet and confer
10 declaration under Section 2016.040.

11 (c) Unless notice of this motion is given within 45 days of the service of the
12 response, or any supplemental response, or any specific later date to which the
13 requesting party and the responding party have agreed in writing, the requesting
14 party waives any right to compel further response to the requests for admission.

15 (d) The court shall impose a monetary sanction under Chapter 7 (commencing
16 with Section 2023.010) against any party, person, or attorney who unsuccessfully
17 makes or opposes a motion to compel further response, unless it finds that the one
18 subject to the sanction acted with substantial justification or that other
19 circumstances make the imposition of the sanction unjust.

20 (e) If a party then fails to obey an order compelling further response to requests
21 for admission, the court may order that the matters involved in the requests be
22 deemed admitted. In lieu of or in addition to this order, the court may impose a
23 monetary sanction under Chapter 7 (commencing with Section 2023.010).

24 **Comment.** Subdivision (a) of Section 2033.290 continues the first sentence of former Section
25 2033(l) without substantive change.

26 Subdivision (b) continues the second sentence of former Section 2033(l) without substantive
27 change.

28 Subdivision (c) continues the second paragraph of former Section 2033(l) without change.

29 Subdivision (d) continues the third paragraph of former Section 2033(l) without change, except
30 to conform the cross-reference.

31 Subdivision (e) continues the fourth paragraph of former Section 2033(l) without change,
32 except to conform the cross-reference.

33 **§ 2033.300. Withdrawal or amendment of admission**

34 2033.300. (a) A party may withdraw or amend an admission made in response to
35 a request for admission only on leave of court granted after notice to all parties.

36 (b) The court may permit withdrawal or amendment of an admission only if it
37 determines that the admission was the result of mistake, inadvertence, or excusable
38 neglect, and that the party who obtained the admission will not be substantially
39 prejudiced in maintaining that party's action or defense on the merits.

40 (c) The court may impose conditions on the granting of the motion that are just,
41 including, but not limited to, the following:

1 (1) An order that the party who obtained the admission be permitted to pursue
2 additional discovery related to the matter involved in the withdrawn or amended
3 admission.

4 (2) An order that the costs of any additional discovery be borne in whole or in
5 part by the party withdrawing or amending the admission.

6 **Comment.** Subdivision (a) of Section 2033.300 continues the first sentence of former Section
7 2033(m) without change.

8 Subdivision (b) continues the second sentence of former Section 2033(m) without change.

9 Subdivision (c) continues the third sentence of former Section 2033(m) without substantive
10 change.

11 Article 3. Effect of Admission

12 § 2033.410. Effect of admission

13 2033.410. (a) Any matter admitted in response to a request for admission is
14 conclusively established against the party making the admission in the pending
15 action, unless the court has permitted withdrawal or amendment of that admission
16 under Section 2033.300.

17 (b) Notwithstanding subdivision (a), any admission made by a party under this
18 section is binding only on that party and is made for the purpose of the pending
19 action only. It is not an admission by that party for any other purpose, and it shall
20 not be used in any manner against that party in any other proceeding.

21 **Comment.** Subdivision (a) of Section 2033.410 continues the first sentence of former Section
22 2033(n) without change, except to conform the cross-reference.

23 Subdivision (b) continues the second and third sentences of former Section 2033(n) without
24 substantive change.

25 § 2033.420. Failure to admit fact proven to be true

26 2033.420. (a) If a party fails to admit the genuineness of any document or the
27 truth of any matter when requested to do so under this chapter, and if the party
28 requesting that admission thereafter proves the genuineness of that document or
29 the truth of that matter, the party requesting the admission may move the court for
30 an order requiring the party to whom the request was directed to pay the
31 reasonable expenses incurred in making that proof, including reasonable attorney's
32 fees.

33 (b) The court shall make this order unless it finds any of the following:

34 (1) An objection to the request was sustained or a response to it was waived
35 under Section 2033.290.

36 (2) The admission sought was of no substantial importance.

37 (3) The party failing to make the admission had reasonable ground to believe
38 that that party would prevail on the matter.

39 (4) There was other good reason for the failure to admit.

40 **Comment.** Subdivision (a) of Section 2033.420 continues the first sentence of former Section
41 2033(o) without change, except to replace “section” with “chapter.”

1 Subdivision (b) continues the second sentence of former Section 2033(o) without substantive
2 change.

3 CHAPTER 17. FORM INTERROGATORIES AND
4 REQUESTS FOR ADMISSION

5 **§ 2033.510. Judicial Council to develop form interrogatories and requests for admission**

6 2033.510. The Judicial Council shall develop and approve official form
7 interrogatories and requests for admission of the genuineness of any relevant
8 documents or of the truth of any relevant matters of fact for use in any civil action
9 in a state court based on personal injury, property damage, wrongful death,
10 unlawful detainer, breach of contract, family law, or fraud and for any other civil
11 actions the Judicial Council deems appropriate.

12 **Comment.** Section 2033.510 continues the first sentence of former Section 2033.5(a) without
13 change.

14 **§ 2033.520. Form interrogatories for use by victim who has not received complete payment**
15 **of restitution order**

16 2033.520. (a) The Judicial Council shall develop and approve official form
17 interrogatories for use by a victim who has not received complete payment of a
18 restitution order made pursuant to Section 1202.4 of the Penal Code.

19 (b) Notwithstanding whether a victim initiates or maintains an action to satisfy
20 the unpaid restitution order, a victim may propound the form interrogatories
21 approved pursuant to this section once each calendar year. The defendant subject
22 to the restitution order shall, in responding to the interrogatories propounded,
23 provide current information regarding the nature, extent, and location of any
24 assets, income, and liabilities in which the defendant claims a present or future
25 interest.

26 **Comment.** Subdivision (a) of Section 2033.520 continues former Section 2033.5(d) without
27 change.

28 Subdivision (b) continues former Section 2033.5(e) without change.

29 **§ 2033.530. Procedures for development of form interrogatories and requests for admission**

30 2033.530. (a) In developing the form interrogatories and requests for admission
31 required by Sections 2033.510 and 2033.520, the Judicial Council shall consult
32 with a representative advisory committee which shall include, but not be limited
33 to, representatives of all of the following:

- 34 (1) The plaintiff's bar.
- 35 (2) The defense bar.
- 36 (3) The public interest bar.
- 37 (4) Court administrators.
- 38 (5) The public.

1 (b) The form interrogatories and requests for admission shall be drafted in
2 nontechnical language.

3 **Comment.** Subdivision (a) of Section 2033.530 continues the first sentence of former Section
4 2033.5(b) without substantive change.

5 Subdivision (b) continues the first clause of the second sentence of former Section 2033.5(b)
6 without substantive change.

7 **§ 2033.540. Procedures for use of form interrogatories and requests for admission**

8 2033.540. (a) Use of the form interrogatories and requests for admission
9 approved by the Judicial Council shall be optional.


10 (b) The form interrogatories and requests for admission shall be made available
11 through the office of the clerk of the appropriate trial court.

12 (c) The Judicial Council shall promulgate any necessary rules to govern the use
13 of the form interrogatories and requests for admission.

14 **Comment.** Subdivision (a) of Section 2033.540 continues the second sentence of former
15 Section 2033.5(a) without substantive change.

16 Subdivision (b) continues the second clause of the second sentence of former Section 2033.5(b)
17 without substantive change.

18 Subdivision (c) continues former Section 2033.5(c) without substantive change.

19  **Note.** Section 2033.5(f) states: “This section shall become operative on January 1, 2000.”
20 That language appears to be obsolete, so it would not be continued in this draft.

21 **CHAPTER 18. SIMULTANEOUS EXCHANGE OF**
22 **EXPERT WITNESS INFORMATION**

23 **Article 1. General Provisions**

24 **§ 2034.010. Application of chapter**

25 2034.010. This chapter does not apply to exchanges of lists of experts and
26 valuation data in eminent domain proceedings under Chapter 7 (commencing with
27 Section 1258.010) of Title 7 of Part 3.

28 **Comment.** Section 2034.010 continues the last paragraph of former Section 2034(a) without
29 change, except to replace “section” with “chapter.”

30 **Article 2. Demand for Exchange of Expert Witness Information**

31 **§ 2034.210. Simultaneous exchange of information concerning expert trial witnesses**

32 2034.210. After the setting of the initial trial date for the action, any party may
33 obtain discovery by demanding that all parties simultaneously exchange
34 information concerning each other’s expert trial witnesses to the following extent:

35 (a) Any party may demand a mutual and simultaneous exchange by all parties of
36 a list containing the name and address of any natural person, including one who is
37 a party, whose oral or deposition testimony in the form of an expert opinion any
38 party expects to offer in evidence at the trial.

1 (b) If any expert designated by a party under subdivision (a) is a party or an
2 employee of a party, or has been retained by a party for the purpose of forming
3 and expressing an opinion in anticipation of the litigation or in preparation for the
4 trial of the action, the designation of that witness shall include or be accompanied
5 by an expert witness declaration under Section 2034.260.

6 (c) Any party may also include a demand for the mutual and simultaneous
7 production for inspection and copying of all discoverable reports and writings, if
8 any, made by any expert described in subdivision (b) in the course of preparing
9 that expert's opinion.

10 **Comment.** The introductory clause of Section 2034.210 continues the introductory clause of
11 former Section 2034(a) without change.

12 Subdivision (a) continues former Section 2034(a)(1) without change.

13 Subdivision (b) continues former Section 2034(a)(2) without change, except to conform the
14 cross-references.

15 Subdivision (c) continues former Section 2034(a)(3) without change, except to conform the
16 cross-reference.

17 **§ 2034.220. Time of demanding exchange of expert witness information**

18 2034.220. Any party may make a demand for an exchange of information
19 concerning expert trial witnesses without leave of court. A party shall make this
20 demand no later than the 10th day after the initial trial date has been set, or 70 days
21 before that trial date, whichever is closer to the trial date.

22 **Comment.** Section 2034.220 continues former Section 2034(b) without change.

23 **§ 2034.230. Form and content of demand for exchange of expert witness information**

24 2034.230. (a) A demand for an exchange of information concerning expert trial
25 witnesses shall be in writing and shall identify, below the title of the case, the
26 party making the demand. The demand shall state that it is being made under this
27 chapter.

28 (b) The demand shall specify the date for the exchange of lists of expert trial
29 witnesses, expert witness declarations, and any demanded production of writings.
30 The specified date of exchange shall be 50 days before the initial trial date, or 20
31 days after service of the demand, whichever is closer to the trial date, unless the
32 court, on motion and a showing of good cause, orders an earlier or later date of
33 exchange.

34 **Comment.** Subdivision (a) of Section 2034.230 continues the first paragraph of former Section
35 2034(c) without change, except to replace "section" with "chapter."

36 Subdivision (b) continues the second paragraph of former Section 2034(c) without change.

37 **§ 2034.240. Service of demand for exchange of expert witness information**

38 2034.240. The party demanding an exchange of information concerning expert
39 trial witnesses shall serve the demand on all parties who have appeared in the
40 action.

41 **Comment.** Section 2034.240 continues former Section 2034(d) without change.

1 § 2034.250. Motion for protective order

2 2034.250. (a) A party who has been served with a demand to exchange
3 information concerning expert trial witnesses may promptly move for a protective
4 order. This motion shall be accompanied by a meet and confer declaration under
5 Section 2016.040.

6 (b) The court, for good cause shown, may make any order that justice requires to
7 protect any party from unwarranted annoyance, embarrassment, oppression, or
8 undue burden and expense. The protective order may include, but is not limited to,
9 one or more of the following directions:

10 (1) That the demand be quashed because it was not timely served.

11 (2) That the date of exchange be earlier or later than that specified in the
12 demand.

13 (3) That the exchange be made only on specified terms and conditions.

14 (4) That the production and exchange of any reports and writings of experts be
15 made at a different place or at a different time than specified in the demand.

16 (5) That some or all of the parties be divided into sides on the basis of their
17 identity of interest in the issues in the action, and that the designation of any
18 experts as described in subdivision (b) of Section 2034.210 be made by any side so
19 created.

20 (6) That a party or a side reduce the list of employed or retained experts
21 designated by that party or side under subdivision (b) of Section 2034.210.

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

26 (d) The court shall impose a monetary sanction under Chapter 7 (commencing
27 with Section 2023.010) against any party, person, or attorney who unsuccessfully
28 makes or opposes a motion for a protective order [under this section], unless it
29 finds that the one subject to the sanction acted with substantial justification or that
30 other circumstances make the imposition of the sanction unjust.

31 **Comment.** Subdivision (a) of Section 2034.250 continues the first paragraph of former Section
32 2034(e) without substantive change.

33 Subdivision (b) continues the second paragraph of former Section 2034(e) (including items (1)-
34 (6)) without change, except to conform the cross-references.

35 Subdivision (c) continues the next-to-last paragraph of former Section 2034(e) without change.

36 Subdivision (d) continues the last paragraph of former Section 2034(e) without substantive
37 change.

38 ☞ **Note.** The last paragraph of Section 2034(e) states: “The court shall impose a monetary
39 sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or
40 opposes a motion for a protective order, unless it finds that the one subject to the sanction acted
41 with substantial justification or that other circumstances make the imposition of the sanction
42 unjust.” (Emphasis added.) From this language, it is unclear whether the provision is meant to
43 apply to any motion for a protective order, or only to a motion for a protective order relating to
44 exchange of expert witness information. The Commission presumes the latter, because otherwise
45 language in other discovery provisions would be surplusage. The Commission solicits comment

1 on whether the reference to “protective order” should be changed to “protective order under this
2 section,” as shown in brackets in proposed Section 2034.250(d).

3 **§ 2034.260. Manner of exchanging expert witness information**

4 2034.260. (a) All parties who have appeared in the action shall exchange
5 information concerning expert witnesses in writing on or before the date of
6 exchange specified in the demand. The exchange of information may occur at a
7 meeting of the attorneys for the parties involved or by a mailing on or before the
8 date of exchange.

9 (b) The exchange of expert witness information shall include either of the
10 following:

11 (1) A list setting forth the name and address of any person whose expert opinion
12 that party expects to offer in evidence at the trial.

13 (2) A statement that the party does not presently intend to offer the testimony of
14 any expert witness.

15 (c) If any witness on the list is an expert as described in subdivision (b) of
16 Section 2034.210, the exchange shall also include or be accompanied by an expert
17 witness declaration signed only by the attorney for the party designating the
18 expert, or by that party if that party has no attorney. This declaration shall be under
19 penalty of perjury and shall contain:

20 (1) A brief narrative statement of the qualifications of each expert.

21 (2) A brief narrative statement of the general substance of the testimony that the
22 expert is expected to give.

23 (3) A representation that the expert has agreed to testify at the trial.

24 (4) A representation that the expert will be sufficiently familiar with the pending
25 action to submit to a meaningful oral deposition concerning the specific testimony,
26 including any opinion and its basis, that the expert is expected to give at trial.

27 (5) A statement of the expert’s hourly and daily fee for providing deposition
28 testimony and for consulting with the retaining attorney.

29 **Comment.** Subdivision (a) of Section 2034.260 continues the introductory paragraph of former
30 Section 2034(f) without change.

31 Subdivision (b) continues former Section 2034(f)(1) (including items (A) and (B)) without
32 change.

33 Subdivision (c) continues former Section 2034(f)(2) (including items (A)-(E)) without change,
34 except to conform the cross-reference.

35 **§ 2034.270. Exchange of reports and writings**

36 2034.270. If a demand for an exchange of information concerning expert trial
37 witnesses includes a demand for production of reports and writings as described in
38 subdivision (c) of Section 2034.210, all parties shall produce and exchange, at the
39 place and on the date specified in the demand, all discoverable reports and
40 writings, if any, made by any designated expert described in subdivision (b) of
41 Section 2034.210.

1 **Comment.** Section 2034.270 continues former Section 2034(g) without change, except to
2 conform the cross-references.

3 **§ 2034.280. Supplemental expert witness list**

4 2034.280. (a) Within 20 days after the exchange described in Section 2034.260,
5 any party who engaged in the exchange may submit a supplemental expert witness
6 list containing the name and address of any experts who will express an opinion on
7 a subject to be covered by an expert designated by an adverse party to the
8 exchange, if the party supplementing an expert witness list has not previously
9 retained an expert to testify on that subject.

10 (b) This supplemental list shall be accompanied by an expert witness declaration
11 under subdivision (c) of Section 2034.260 concerning those additional experts, and
12 by all discoverable reports and writings, if any, made by those additional experts.

13 (c) The party shall also make those experts available immediately for a
14 deposition under Article 3 (commencing with Section 2034.410), which deposition
15 may be taken even though the time limit for discovery under Chapter 8
16 (commencing with Section 2024.010) has expired.

17 **Comment.** Subdivision (a) of Section 2034.280 continues the first sentence of former Section
18 2034(h) without change, except to conform the cross-reference.

19 Subdivision (b) continues the second sentence of former Section 2034(h) without change,
20 except to conform the cross-reference.

21 Subdivision (c) continues the third sentence of former Section 2034(h) without change, except
22 to conform the cross-references.

23 **§ 2034.290. Retention of original demand for exchange of expert witness information and**
24 **original response**

25 2034.290. (a) A demand for an exchange of information concerning expert trial
26 witnesses, and any expert witness lists and declarations exchanged shall not be
27 filed with the court.

28 (b) The party demanding the exchange shall retain both the original of the
29 demand, with the original proof of service affixed, and the original of all expert
30 witness lists and declarations exchanged in response to the demand until six
31 months after final disposition of the action. At that time, all originals may be
32 destroyed unless the court, on motion of any party and for good cause shown,
33 orders that the originals be preserved for a longer period.

34 (c) Notwithstanding subdivisions (a) and (b), a demand for exchange of
35 information concerning expert trial witnesses, and all expert witness lists and
36 declarations exchanged in response to it, shall be lodged with the court when their
37 contents become relevant to an issue in any pending matter in the action.

38 **Comment.** Subdivision (a) of Section 2034.290 continues the first sentence of former Section
39 2034(n) without substantive change.

40 Subdivision (b) continues the second and third sentences of former Section 2034(n) without
41 change.

42 Subdivision (c) continues the fifth sentence of the first paragraph of former Section 2034(k)
43 without substantive change.

1 expert witness, and on a showing of exceptional hardship, the court may order that
2 the deposition be taken at a more distant place from the courthouse.

3 **Comment.** Section 2034.420 continues former Section 2034(i)(1) without substantive change.

4 **§ 2034.430. Fee for deposing expert witness**

5 2034.430. (a) Except as provided in subdivision (f), this section applies to an
6 expert witness, other than a party or an employee of a party, who is any of the
7 following:

8 (1) An expert described in subdivision (b) of Section 2034.260.

9 (2) A treating physician and surgeon or other treating health care practitioner
10 who is to be asked during the deposition to express opinion testimony, including
11 opinion or factual testimony regarding the past or present diagnosis or prognosis
12 made by the practitioner or the reasons for a particular treatment decision made by
13 the practitioner, but not including testimony requiring only the reading of words
14 and symbols contained in the relevant medical record or, if those words and
15 symbols are not legible to the deponent, the approximation by the deponent of
16 what those words or symbols are.

17 (3) An architect, professional engineer, or licensed land surveyor who was
18 involved with the original project design or survey for which that person is asked
19 to express an opinion within the person's expertise and relevant to the action or
20 proceeding.

21 (b) A party desiring to depose an expert witness described in subdivision (a)
22 shall pay the expert's reasonable and customary hourly or daily fee for any time
23 spent at the deposition from the time noticed in the deposition subpoena, or from
24 the time of the arrival of the expert witness should that time be later than the time
25 noticed in the deposition subpoena, until the time the expert witness is dismissed
26 from the deposition, regardless of whether the expert is actually deposed by any
27 party attending the deposition.

28 (c) If any counsel representing the expert or a nonnoticing party is late to the
29 deposition, the expert's reasonable and customary hourly or daily fee for the time
30 period determined from the time noticed in the deposition subpoena until the
31 counsel's late arrival, shall be paid by that tardy counsel.

32 (d) Notwithstanding subdivision (c), the hourly or daily fee charged to the tardy
33 counsel shall not exceed the fee charged to the party who retained the expert,
34 except where the expert donated services to a charitable or other nonprofit
35 organization.

36 (e) A daily fee shall only be charged for a full day of attendance at a deposition
37 or where the expert was required by the deposing party to be available for a full
38 day and the expert necessarily had to forego all business that the expert would
39 otherwise have conducted that day but for the request that the expert be available
40 all day for the scheduled deposition.

41 (f) In a worker's compensation case arising under Division 4 (commencing with
42 Section 3201) or Division 4.5 (commencing with Section 6100) of the Labor

1 Code, a party desiring to depose any expert on another party's expert witness list
2 shall pay the fee under this section.

3 **Comment.** Subdivisions (a) and (b) of Section 2034.430 continue the first sentence of the first
4 paragraph of former Section 2034(i)(2) without substantive change.

5 Subdivision (c) continues the second sentence of the first paragraph of former Section
6 2034(i)(2) without change.

7 Subdivision (d) continues the third sentence of the first paragraph of former Section 2034(i)(2)
8 without substantive change.

9 Subdivision (e) continues the fourth sentence of the first paragraph of former Section 2034(i)(2)
10 without substantive change.

11 Subdivision (f) continues the fifth sentence of the first paragraph of former Section 2034(i)(2)
12 without substantive change.

13 **§ 2034.440. Other fees associated with deposition of expert witness**

14 2034.440. The party designating an expert is responsible for any fee charged by
15 the expert for preparing for a deposition and for traveling to the place of the
16 deposition, as well as for any travel expenses of the expert.

17 **Comment.** Section 2034.440 continues the fourth sentence of the second paragraph of former
18 Section 2034(i)(2) without substantive change.

19 **§ 2034.450. Process for payment of fee for depositing expert witness**

20 2034.450. (a) The party taking the deposition of an expert witness shall either
21 accompany the service of the deposition notice with a tender of the expert's fee
22 based on the anticipated length of the deposition, or tender that fee at the
23 commencement of the deposition.

24 (b) The expert's fee shall be delivered to the attorney for the party designating
25 the expert.

26 (c) If the deposition of the expert takes longer than anticipated, the party giving
27 notice of the deposition shall pay the balance of the expert's fee within five days
28 of receipt of an itemized statement from the expert.

29 **Comment.** Subdivision (a) of Section 2034.450 continues the first sentence of the second
30 paragraph of former Section 2034(i)(2) without substantive change.

31 Subdivision (b) continues the second sentence of the second paragraph of former Section
32 2034(i)(2) without change.

33 Subdivision (c) continues the third sentence of the second paragraph of former Section
34 2034(i)(2) without change.

35 **§ 2034.460. Production of expert**

36 2034.460. (a) The service of a proper deposition notice accompanied by the
37 tender of the expert witness fee described in Section 2034.430 is effective to
38 require the party employing or retaining the expert to produce the expert for the
39 deposition.

40 (b) If the party noticing the deposition fails to tender the expert's fee under
41 Section 2034.430, the expert shall not be deposed at that time unless the parties
42 stipulate otherwise.

1 **Comment.** Subdivision (a) of Section 2034.460 continues the first sentence of former Section
2 2034(i)(3) without change, except to conform the cross-reference.

3 Subdivision (b) continues the second sentence of former Section 2034(i)(3) without change,
4 except to conform the cross-reference.

5 **§ 2034.470. Motion to set compensation of expert**

6 2034.470. (a) If a party desiring to take the deposition of an expert witness under
7 this article deems that the hourly or daily fee of that expert for providing
8 deposition testimony is unreasonable, that party may move for an order setting the
9 compensation of that expert. Notice of this motion shall also be given to the
10 expert.

11 (b) A motion under subdivision (a) shall be accompanied by a meet and confer
12 declaration under Section 2016.040. In any attempt at an informal resolution under
13 Section 2016.040, either the party or the expert shall provide the other with all of
14 the following:

15 (1) Proof of the ordinary and customary fee actually charged and received by
16 that expert for similar services provided outside the subject litigation.

17 (2) The total number of times the presently demanded fee has ever been charged
18 and received by that expert.

19 (3) The frequency and regularity with which the presently demanded fee has
20 been charged and received by that expert within the two-year period preceding the
21 hearing on the motion.

22 (c) In addition to any other facts or evidence, the expert or the party designating
23 the expert shall provide, and the court's determination as to the reasonableness of
24 the fee shall be based on, proof of the ordinary and customary fee actually charged
25 and received by that expert for similar services provided outside the subject
26 litigation.

27 (d) In an action filed after January 1, 1994, the expert or the party designating
28 the expert shall also provide, and the court's determination as to the
29 reasonableness of the fee shall also be based on, both of the following:

30 (1) The total number of times the presently demanded fee has ever been charged
31 and received by that expert.

32 (2) The frequency and regularity with which the presently demanded fee has
33 been charged and received by that expert within the two-year period preceding the
34 hearing on the motion.

35 (e) The court may also consider the ordinary and customary fees charged by
36 similar experts for similar services within the relevant community and any other
37 factors the court deems necessary or appropriate to make its determination.

38 (f) Upon a determination that the fee demanded by that expert is unreasonable,
39 and based upon the evidence and factors considered, the court shall set the fee of
40 the expert providing testimony.

41 (g) The court shall impose a monetary sanction under Chapter 7 (commencing
42 with Section 2023.010) against any party, person, or attorney who unsuccessfully
43 makes or opposes a motion to set the expert witness fee, unless it finds that the one

1 subject to the sanction acted with substantial justification or that other
2 circumstances make the imposition of the sanction unjust.

3 **Comment.** Subdivision (a) of Section 2034.470 continues the first and third sentences of the
4 first paragraph of former Section 2034(i)(4) without change, except to replace “subdivision” with
5 “article.”

6 Subdivision (b) continues the second and fourth sentences of the first paragraph of former
7 Section 2034(i)(4) without substantive change.

8 Subdivisions (c) and (d) continue the first and second sentences of the second paragraph of
9 former Section 2034(i)(4) without substantive change.

10 Subdivision (e) continues the third sentence of the second paragraph of former Section
11 2034(i)(4) without change.

12 Subdivision (f) continues the third paragraph of former Section 2034(i)(4) without change.

13 Subdivision (g) continues the fourth paragraph of former Section 2034(i)(4) without change,
14 except to conform the cross-reference.

15 Article 4. Motion To Augment or Amend Expert 16 Witness List or Declaration

17 § 2034.610. Motion to augment or amend expert witness list or declaration

18 2034.610. (a) On motion of any party who has engaged in a timely exchange of
19 expert witness information, the court may grant leave to do either or both of the
20 following:

21 (1) Augment that party’s expert witness list and declaration by adding the name
22 and address of any expert witness whom that party has subsequently retained.

23 (2) Amend that party’s expert witness declaration with respect to the general
24 substance of the testimony that an expert previously designated is expected to
25 give.

26 (b) A motion under subdivision (a) shall be made at a sufficient time in advance
27 of the time limit for the completion of discovery under Chapter 8 (commencing
28 with Section 2024.010) to permit the deposition of any expert to whom the motion
29 relates to be taken within that time limit. Under exceptional circumstances, the
30 court may permit the motion to be made at a later time.

31 (c) The motion shall be accompanied by a meet and confer declaration under
32 Section 2016.040.

33 **Comment.** Subdivision (a) of Section 2034.610 continues the first sentence of the first
34 paragraph of former Section 2034(k) without substantive change.

35 Subdivision (b) continues the second and third sentences of the first paragraph of former
36 Section 2034(k) without substantive change.

37 Subdivision (c) continues the fourth sentence of the first paragraph of former Section 2034(k)
38 without substantive change.

39 § 2034.620. Order on motion to augment or amend expert witness list or declaration

40 2034.620. The court shall grant leave to augment or amend an expert witness list
41 or declaration only if all of the following conditions are satisfied:

42 (a) The court has taken into account the extent to which the opposing party has
43 relied on the list of expert witnesses.

1 (b) The court has determined that any party opposing the motion will not be
2 prejudiced in maintaining that party's action or defense on the merits.

3 (c) The court has determined either of the following:

4 (1) The moving party would not in the exercise of reasonable diligence have
5 determined to call that expert witness or have decided to offer the different or
6 additional testimony of that expert witness.

7 (2) The moving party failed to determine to call that expert witness, or to offer
8 the different or additional testimony of that expert witness as a result of mistake,
9 inadvertence, surprise, or excusable neglect, and the moving party has done both
10 of the following:

11 (A) Sought leave to augment or amend promptly after deciding to call the expert
12 witness or to offer the different or additional testimony.

13 (B) Promptly thereafter served a copy of the proposed expert witness
14 information concerning the expert or the testimony described in Section 2034.260
15 on all other parties who have appeared in the action.

16 (d) Leave to augment or amend is conditioned on the moving party making the
17 expert available immediately for a deposition under Article 3 (commencing with
18 Section 2034.410), and on any other terms as may be just, including, but not
19 limited to, leave to any party opposing the motion to designate additional expert
20 witnesses or to elicit additional opinions from those previously designated, a
21 continuance of the trial for a reasonable period of time, and the awarding of costs
22 and litigation expenses to any party opposing the motion.

23 **Comment.** The introductory clause and subdivisions (a), (b), and (c) of Section 2034.620
24 continue the sixth sentence of the first paragraph of former Section 2034(k) without substantive
25 change.

26 Subdivision (d) continues the seventh sentence of the first paragraph of former Section 2034(k)
27 without substantive change.

28 **§ 2034.630. Monetary sanction for unsuccessfully making or opposing motion to augment or**
29 **amend expert witness information**

30 2034.630. The court shall impose a monetary sanction under Chapter 7
31 (commencing with Section 2023.010) against any party, person, or attorney who
32 unsuccessfully makes or opposes a motion to augment or amend expert witness
33 information, unless it finds that the one subject to the sanction acted with
34 substantial justification or that other circumstances make the imposition of the
35 sanction unjust.

36 **Comment.** Section 2034.630 continues the second paragraph of former Section 2034(k)
37 without change, except to conform the cross-reference.

1 Article 5. Motion To Submit Tardy Expert Witness Information

2 **§ 2034.710. Motion to submit tardy expert witness information**

3 2034.710. (a) On motion of any party who has failed to submit expert witness
4 information on the date specified in a demand for that exchange, the court may
5 grant leave to submit that information on a later date.

6 (b) A motion under subdivision (a) shall be made a sufficient time in advance of
7 the time limit for the completion of discovery under Chapter 8 (commencing with
8 Section 2024.010) to permit the deposition of any expert to whom the motion
9 relates to be taken within that time limit. Under exceptional circumstances, the
10 court may permit the motion to be made at a later time.

11 (c) The motion shall be accompanied by a meet and confer declaration under
12 Section 2016.040.

13 **Comment.** Subdivision (a) of Section 2034.710 continues the first sentence of former Section
14 2034(l) without change.

15 Subdivision (b) continues the second and third sentences of former Section 2034(l) without
16 substantive change.

17 Subdivision (c) continues the fourth sentence of former Section 2034(l) without substantive
18 change.

19 **§ 2034.720. Order on motion to submit tardy expert witness information**

20 2034.720. The court shall grant leave to submit tardy expert witness information
21 only if all of the following conditions are satisfied:

22 (a) The court has taken into account the extent to which the opposing party has
23 relied on the absence of a list of expert witnesses.

24 (b) The court has determined that any party opposing the motion will not be
25 prejudiced in maintaining that party's action or defense on the merits.

26 (c) The court has determined that the moving party did all of the following:

27 (1) Failed to submit the information as the result of mistake, inadvertence,
28 surprise, or excusable neglect.

29 (2) Sought leave to submit the information promptly after learning of the
30 mistake, inadvertence, surprise, or excusable neglect.

31 (3) Promptly thereafter served a copy of the proposed expert witness information
32 described in Section 2034.260 on all other parties who have appeared in the action.

33 (d) The order is conditioned on the moving party making the expert available
34 immediately for a deposition under Article 3 (commencing with Section
35 2034.410), and on any other terms as may be just, including, but not limited to,
36 leave to any party opposing the motion to designate additional expert witnesses or
37 to elicit additional opinions from those previously designated, a continuance of the
38 trial for a reasonable period of time, and the awarding of costs and litigation
39 expenses to any party opposing the motion.

40 **Comment.** The introductory clause and subdivisions (a), (b), and (c) of Section 2034.720
41 continue the first sentence of the second paragraph of former Section 2034(l) without substantive
42 change.

1 Subdivision (d) continues the second sentence of the second paragraph of former Section
2 2034(l) without substantive change.

3 **§ 2034.730. Monetary sanction for unsuccessfully making or opposing motion to submit**
4 **tardy expert witness information**

5 2034.730. The court shall impose a monetary sanction under Chapter 7
6 (commencing with Section 2023.010) against any party, person, or attorney who
7 unsuccessfully makes or opposes a motion to submit tardy expert witness
8 information, unless it finds that the one subject to the sanction acted with
9 substantial justification or that other circumstances make the imposition of the
10 sanction unjust.

11 **Comment.** Section 2034.730 continues the third paragraph of former Section 2034(l) without
12 change, except to conform the cross-reference.

13 CHAPTER 19. PERPETUATION OF TESTIMONY OR
14 PRESERVATION OF EVIDENCE BEFORE FILING ACTION

15 **§ 2035.010. Perpetuation of testimony or preservation of evidence before filing action**

16 2035.010. (a) One who expects to be a party to any action that may be
17 cognizable in any court of the State of California, whether as a plaintiff, or as a
18 defendant, or in any other capacity, may obtain discovery within the scope
19 delimited by Chapters 2 (commencing with Section 2017.010) and 3 (commencing
20 with Section 2017.510), and subject to the restrictions set forth in Chapter 5
21 (commencing with Section 2019.010), for the purpose of perpetuating that party's
22 own testimony or that of another natural person or organization, or of preserving
23 evidence for use in the event an action is subsequently filed.

24 (b) One shall not employ the procedures of this chapter for the purpose either of
25 ascertaining the possible existence of a cause of action or a defense to it, or of
26 identifying those who might be made parties to an action not yet filed.

27 **Comment.** Subdivision (a) of Section 2035.010 continues the first sentence of former Section
28 2035(a) without change, except to conform the cross-references.

29 Subdivision (b) continues the second sentence of former Section 2035(a) without change,
30 except to replace "section" with "chapter."

31 **§ 2035.020. Methods of discovery**

32 2035.020. The methods available for discovery conducted for the purposes set
33 forth in Section 2035.010 are all of the following:

- 34 (a) Oral and written depositions.
35 (b) Inspections of documents, things, and places.
36 (c) Physical and mental examinations.

37 **Comment.** Section 2035.020 continues former Section 2035(b) without substantive change.

1 **§ 2035.030. Petition**

2 2035.030. (a) One who desires to perpetuate testimony or preserve evidence for
3 the purposes set forth in Section 2035.010 shall file a verified petition in the
4 superior court of the county of the residence of at least one expected adverse party,
5 or, if no expected adverse party is a resident of the State of California, in the
6 superior court of a county where the action or proceeding may be filed.

7 (b) The petition shall be titled in the name of the one who desires the
8 perpetuation of testimony or the preservation of evidence. The petition shall set
9 forth all of the following:

10 (1) The expectation that the petitioner will be a party to an action cognizable in a
11 court of the State of California.

12 (2) The present inability of the petitioner either to bring that action or to cause it
13 to be brought.

14 (3) The subject matter of the expected action and the petitioner's involvement.

15 (4) The particular discovery methods described in Section 2035.020 that the
16 petitioner desires to employ.

17 (5) The facts that the petitioner desires to establish by the proposed discovery.

18 (6) The reasons for desiring to perpetuate or preserve these facts before an action
19 has been filed.

20 (7) The name or a description of those whom the petitioner expects to be adverse
21 parties so far as known.

22 (8) The name and address of those from whom the discovery is to be sought.

23 (9) The substance of the information expected to be elicited from each of those
24 from whom discovery is being sought.

25 (c) The petition shall request the court to enter an order authorizing the petitioner
26 to engage in discovery by the described methods for the purpose of perpetuating
27 the described testimony or preserving the described evidence.

28 **Comment.** Subdivision (a) of Section 2035.030 continues former Section 2035(c) without
29 change, except to conform the cross-reference.

30 Subdivision (b) continues the first paragraph (including items (1)-(9)) of former Section
31 2035(d) without change, except to conform the cross-reference.

32 Subdivision (c) continues the last paragraph of former Section 2035(d) without change.

33 **§ 2035.040. Service of notice of petition**

34 2035.040. (a) The petitioner shall cause service of a notice of the petition under
35 Section 2035.030 to be made on each natural person or organization named in the
36 petition as an expected adverse party. This service shall be made in the same
37 manner provided for the service of a summons.

38 (b) The service of the notice shall be accompanied by a copy of the petition. The
39 notice shall state that the petitioner will apply to the court at a time and place
40 specified in the notice for the order requested in the petition.

41 (c) This service shall be effected at least 20 days prior to the date specified in the
42 notice for the hearing on the petition.

1 (d) If after the exercise of due diligence, the petitioner is unable to cause service
2 to be made on any expected adverse party named in the petition, the court in which
3 the petition is filed shall make an order for service by publication.

4 (e) If any expected adverse party served by publication does not appear at the
5 hearing, the court shall appoint an attorney to represent that party for all purposes,
6 including the cross-examination of any person whose testimony is taken by
7 deposition. The court shall order that the petitioner pay the reasonable fees and
8 expenses of any attorney so appointed.

9 **Comment.** Subdivision (a) of Section 2035.040 continues the first and second sentences of
10 former Section 2035(e) without substantive change.

11 Subdivision (b) continues the third and fourth sentences of former Section 2035(e) without
12 change.

13 Subdivision (c) continues the fifth sentence of former Section 2035(e) without change.

14 Subdivision (d) continues the first sentence of the second paragraph of former Section 2035(e)
15 without change.

16 Subdivision (e) continues the second and third sentences of the second paragraph of former
17 Section 2035(e) without change.

18 § 2035.050. Court order

19 2035.050. (a) If the court determines that all or part of the discovery requested
20 under this chapter may prevent a failure or delay of justice, it shall make an order
21 authorizing that discovery.

22 (b) The order shall identify any witness whose deposition may be taken, and any
23 documents, things, or places that may be inspected, and any person whose physical
24 or mental condition may be examined.

25 (c) Any authorized depositions, inspections, and physical or mental
26 examinations shall then be conducted in accordance with the provisions of this title
27 relating to those methods of discovery in actions that have been filed.

28 **Comment.** Subdivision (a) of Section 2035.050 continues the first sentence of former Section
29 2035(f) without substantive change.

30 Subdivision (b) continues the second sentence of former Section 2035(f) without change.

31 Subdivision (c) continues the third sentence of former Section 2035(f) without change, except
32 to replace “article” with “title.”

33 § 2035.060. Use of presuit deposition to perpetuate testimony

34 2035.060. If a deposition to perpetuate testimony has been taken either under the
35 provisions of this chapter, or under comparable provisions of the laws of another
36 state, or the federal courts, or a foreign nation, that deposition may be used, in any
37 action involving the same subject matter that is brought in a court of the State of
38 California, in accordance with Section 2025.620 against any party, or the
39 successor in interest of any party, named in the petition as an expected adverse
40 party.

41 **Comment.** Section 2035.060 continues former Section 2035(g) without change, except to
42 replace “section” with “chapter” and to conform the cross-reference.

1 CHAPTER 20. PERPETUATION OF TESTIMONY OR
2 PRESERVATION OF INFORMATION PENDING APPEAL

3 **§ 2036.010. Perpetuation of testimony or preservation of information pending appeal**

4 2036.010. If an appeal has been taken from a judgment entered by any court of
5 the State of California, or if the time for taking an appeal has not expired, a party
6 may obtain discovery within the scope delimited by Chapters 2 (commencing with
7 Section 2017.010) and 3 (commencing with Section 2017.510), and subject to the
8 restrictions set forth in Chapter 5 (commencing with Section 2019.010), for the
9 purpose of perpetuating testimony or preserving information for use in the event of
10 further proceedings in that court.

11 **Comment.** Section 2036.010 continues former Section 2036(a) without change, except to
12 conform the cross-references.

13 **§ 2036.020. Methods of discovery**

14 2036.020. The methods available for discovery for the purpose set forth in
15 Section 2036.010 are all of the following:

- 16 (a) Oral and written depositions.
- 17 (b) Inspections of documents, things, and places.
- 18 (c) Physical and mental examinations.

19 **Comment.** Section 2036.020 continues former Section 2036(b) without substantive change.

20 **§ 2036.030. Motion for leave to conduct discovery pending appeal**

21 2036.030. (a) A party who desires to obtain discovery pending appeal shall
22 obtain leave of the court that entered the judgment. This motion shall be made on
23 the same notice to and service of parties as is required for discovery sought in an
24 action pending in that court.

25 (b) The motion for leave to conduct discovery pending appeal shall set forth all
26 of the following:

- 27 (1) The names and addresses of the natural persons or organizations from whom
28 the discovery is being sought.
- 29 (2) The particular discovery methods described in Section 2036.020 for which
30 authorization is being sought.
- 31 (3) The reasons for perpetuating testimony or preserving evidence.

32 **Comment.** Subdivision (a) of Section 2036.030 continues former Section 2036(c) without
33 change.

34 Subdivision (b) continues former Section 2036(d) without substantive change.

35 **§ 2036.040. Court order**

36 2036.040. (a) If the court determines that all or part of the discovery requested
37 under this chapter may prevent a failure or delay of justice in the event of further
38 proceedings in the action in that court, it shall make an order authorizing that
39 discovery.

1 (b) The order shall identify any witness whose deposition may be taken, and any
2 documents, things, or places that may be inspected, and any person whose physical
3 or mental condition may be examined.

4 (c) Any authorized depositions, inspections, and physical and mental
5 examinations shall then be conducted in accordance with the provisions of this title
6 relating to these methods of discovery in a pending action.

7 **Comment.** Subdivision (a) of Section 2036.040 continues the first sentence of former Section
8 2036(e) without substantive change.

9 Subdivision (b) continues the second sentence of former Section 2036(e) without change.

10 Subdivision (c) continues the third sentence of former Section 2036(e) without change, except
11 to replace “article” with “title.”

12 **§ 2036.050. Use of deposition to perpetuate testimony pending appeal**

13 2036.050. If a deposition to perpetuate testimony has been taken under the
14 provisions of this chapter, it may be used in any later proceeding in accordance
15 with Section 2025.620.

Comment. Section 2036.050 continues former Section 2036(f) without change, except to
replace “section” with “chapter” and to conform the cross-reference.

DISPOSITION OF EXISTING LAW

☞ **Note.** This table shows the proposed disposition of Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure, as the law existed on January 1, 2003. Unless otherwise indicated, all proposed dispositions are to the Code of Civil Procedure. For further detail, see the Comment to the appropriate section in this draft, *supra*.

Existing Provision	Corresponding New Provision
2016(a)	2016.010
2016(b)	2016.020
2016(c)	2016.070
2017(a)	2017.010
2017(b)	2017.210
2017(c), 1st ¶	2017.020(a)
2017(c), 2d ¶	2017.020(b)
2017(d), 1st ¶	2017.220(a)
2017(d), 2d ¶	2017.220(b)
2017(e)(1), 1st snt.	2017.530(a)
2017(e)(1), 2d snt.	2017.530(b)
2017(e)(2)	2017.530(c)
2017(e)(3), 1st & 2d snt.	2017.530(d)
2017(e)(3), 3d snt.	2017.530(e)
2017(e)(4)	2017.520(a)
2017(e)(5), 1st-4th snt.	2017.540(a)
2017(e)(5), 5th-7th snt.	2017.540(b)
2017(e)(6)	2017.510
2017(e)(7)	2017.520(b)
2017(e)(8)	2017.520(c)
2018(a)	2018.020
2018(b)	2018.030(b)
2018(c)	2018.030(a)
2018(d), 1st & 2d snt.	2018.040
2018(d), 3d snt.	2018.050
2018(d), 4th snt.	2018.060
2018(e), 1st snt.	2018.070(a)-(b)
2018(e), 2d snt.	2018.070(c)
2018(f), 1st ¶	2018.080
2018(f), 2d ¶	2018.010
2019(a)	2019.010
2019(b), intro. clause	2019.030, intro. clause
2019(b)(1)	2019.030(a)(1)
2019(b)(2)	2019.030(a)(2)
2019(b), next-to-last ¶	2019.030(b)

2019(b), last ¶	2019.030(c)
2019(c), 1st snt.	2019.020(a)
2019(c), 2d snt.	2019.020(b)
2019(d)	2019.510
2019(e)	2016.050
2020(a), 1st snt.	2020.010(a)
2020(a), 2d snt.	2020.010(b)
2020(a), 3d snt. (including items (1)-(3))	2020.020
2020(a), last ¶	2020.030
2020(b), 1st snt.	2020.210(a)
2020(b), 2d snt.	2020.210(b)
2020(c)	2020.310
2020(d)(1), 1st snt.	2020.410(a)-(b)
2020(d)(1), 2d-4th snt.	2020.410(c)
2020(d)(2)	2020.410(d)
2020(d)(3)	2020.420
2020(d)(4), 1st snt.	2020.430(a), (e)
2020(d)(4), 2d snt.	2020.430(b)
2020(d)(4), 3d & 4th snt.	2020.430(c)
2020(d)(4), 5th & 6th snt.	2020.430(d)
2020(d)(5)	2020.440
2020(d)(6)	2020.430(f)
2020(e), 1st snt.	2020.510(a)
2020(e), 2d snt.	2020.510(b)
2020(e), 2d ¶	2020.510(c)
2020(f), 1st snt.	2020.220(a)
2020(f), 2d snt.	2020.220(b)
2020(f), 2d ¶	2020.230(a)
2020(f), 3d ¶	2020.230(b)
2020(g)	2020.220(c)
2020(h)	2020.240
2021	2016.030
2023(a)(1)-(a)(8) & 2023(a)(9), 1st snt.	2023.010
2023(a)(9), 2d snt.	2023.020
2023(b), intro. clause	2023.030, intro. clause
2023(b)(1)	2023.030(a)
2023(b)(2)	2023.030(b)
2023(b)(3)	2023.030(c)
2023(b)(4)	2023.030(d)
2023(b)(5)	2023.030(e)
2023(c)	2023.040
2024(a), 1st snt.	2024.020(a)
2024(a), 2d snt.	Not continued. See 2016.060.

2024(a), 3d snt.	2024.010
2024(a), 4th snt.	2024.020(b)
2024(b)	2024.040(a)
2024(c)	2024.040(b)
2024(d)	2024.030
2024(e), 1st ¶	2024.050(a)
2024(e), 2d ¶ (including items (1)-(4))	2024.050(b)
2024(e), last ¶	2024.050(c)
2024(f)	2024.060
2024(g)	2016.060
2025(a)	2025.010
2025(b)	2025.210
2025(c), 1st snt.	2025.220(a), intro. clause
2025(c), 2d snt.	2025.220(b)
2025(c), 3d & 4th snt.	2025.240(a)
2025(c), 2d ¶	2025.240(b)
2025(d), intro. clause	2025.220(a), intro. clause
2025(d)(1)	2025.220(a)(1)
2025(d)(2)	2025.220(a)(2)
2025(d)(3)	2025.220(a)(3)
2025(d)(4)	2025.220(a)(4)
2025(d)(5)	2025.220(a)(5)
2025(d)(6), 1st ¶	2025.220(a)(6)
2025(d)(6), 2d ¶, 1st snt.	2025.230
2025(d)(6), 2d ¶, 2d snt.	Not continued. See 2025.310(e), 2020.510(a)(1).
2025(d)(6), 3d ¶	2025.240(c)
2025(e)(1)	2025.250(a)
2025(e)(2), 1st snt.	2025.250(b)
2025(e)(2), 2d & 3d snt.	2025.250(c)
2025(e)(3), 1st ¶	2025.260(a)
2025(e)(3), 2d ¶ (including items (A)-(F))	2025.260(b)
2025(e)(3), next-to-last ¶	2025.260(c)
2025(e)(3), last ¶	2025.260(d)
2025(f), 1st & 2d snt.	2025.270(a)
2025(f), 3d snt.	2025.270(b)
2025(f), 2d ¶	2025.270(c)
2025(g), 1st snt.	2025.410(a)
2025(g), 2d & 3d snt.	2025.410(b)
2025(g), 2d ¶	2025.410(c)
2025(g), 3d ¶	2025.410(d)
2025(h)(1)	2025.280(a)
2025(h)(2)	2025.280(b)
2025(h)(3), 1st snt.	2025.310(a)

2025(h)(3), 2d & 3d snt.	2025.310(b)
2025(h)(3), 4th snt.	2025.310(c)
2025(i), 1st ¶	2025.420(a)
2025(i), 2d ¶ (including items (1)-(15))	2025.420(b)
2025(i), next-to-last ¶	2025.420(c)
2025(i), last ¶	2025.420(d)
2025(j)(1)	2025.430
2025(j)(2), 1st ¶	2025.440(a)
2025(j)(2), 2d ¶	2025.440(b)
2025(j)(3), 1st snt.	2025.450(a)
2025(j)(3), 2d snt.	2025.450(b)
2025(j)(3), 3d & 4th snt.	2025.450(c)
2025(j)(3), 2d ¶	2025.450(d)
2025(k), intro. clause	2025.320, intro. clause
2025(k)(1)	2025.320(a)
2025(k)(2)	2025.320(b)
2025(k)(3)	2025.320(c)
2025(k)(4)	2025.320(d)
2025(k)(5)	2025.320(e)
2025(l)(1), 1st snt.	2025.330(a)
2025(l)(1), 2d snt.	2025.330(b)
2025(l)(1), 3d-5th snt.	2025.330(c)
2025(l)(1), 6th snt.	2025.330(d)
2025(l)(2), intro. clause	2025.340, intro. clause
2025(l)(2)(A)	2025.340(a)
2025(l)(2)(B), 1st & 2d snt.	2025.340(b)
2025(l)(2)(B), 3d snt.	2025.340(c)
2025(l)(2)(B), 4th-6th snt.	2025.340(d)
2025(l)(2)(B), 7th & 8th snt.	2025.340(e)
2025(l)(2)(B), 9th & 10th snt.	2025.340(f)
2025(l)(2)(C)	2025.340(g)
2025(l)(2)(D)	2025.340(h)
2025(l)(2)(E)	2025.340(i)
2025(l)(2)(F)	2025.340(j)
2025(l)(2)(G)	2025.340(k)
2025(l)(2)(H)	2025.340(l)
2025(l)(2)(I)	2025.340(m)
2025(l)(3)	2025.330(e)
2025(m)(1)	2025.460(a)
2025(m)(2)	2025.460(b)
2025(m)(3)	2025.460(c)
2025(m)(4)	2025.460(d)
2025(n), 1st & 2d snt.	2025.470

2025(n), 3d & 4th snt.	2025.420(b)(16)
2025(n), 2d ¶	2025.470
2025(o), 1st snt.	2025.480(a)
2025(o), 2d snt.	2025.480(b)
2025(o), 3d & 4th snt.	2025.480(c)
2025(o), 5th & 6th snt.	2025.480(d)
2025(o), 7th snt.	2025.480(e)
2025(o), 2d ¶	2025.480(f)
2025(o), 3d ¶	2025.480(g)
2025(p), 1st snt.	2025.510(a)
2025(p), 2d snt.	2025.510(b)
2025(p), 3d snt.	2025.510(c)
2025(p), 4th snt.	2025.510(d)
2025(p), 5th & 6th snt.	2025.510(e)
2025(p), 7th snt.	2025.510(f)
2025(p), 2d ¶	2025.510(g)
2025(q)(1), 1st snt.	2025.520(a)
2025(q)(1), 2d snt.	2025.520(b)
2025(q)(1), 2d ¶, 1st & 2d snt.	2025.520(c)
2025(q)(1), 2d ¶, 3d snt.	2025.520(d)
2025(q)(1), 3d ¶, 1st & 2d snt.	2025.520(e)
2025(q)(1), 3d ¶, 3d snt.	2025.520(f)
2025(q)(1), 3d ¶, 4th snt.	2025.520(g)
2025(q)(1), 4th ¶	2025.520(h)
2025(q)(2), 1st snt.	2025.530(a)
2025(q)(2), 2d snt.	2025.530(b)
2025(q)(2), 2d ¶, 1st snt.	2025.530(c)
2025(q)(2), 2d ¶, 2d snt.	2025.530(d)
2025(q)(2), 2d ¶, 3d snt.	2025.530(e)
2025(q)(2), 3d ¶	2025.530(f)
2025(r)(1)	2025.540(a)
2025(r)(2)	2025.540(b)
2025(s)(1), 1st ¶	2025.550(a)
2025(s)(1), 2d ¶	2025.550(b)
2025(s)(2), 1st ¶	2025.560(a)
2025(s)(2), 2d ¶	2025.560(b)
2025(s)(2), 3d ¶	2025.560(c)
2025(t), 1st snt.	2025.610(a)
2025(t), 2d snt.	2025.610(b)
2025(t), 3d snt.	2025.610(c)
2025(t), 4th snt.	2025.610(d)
2025(u), intro. clause	2025.620, intro. clause
2025(u)(1)	2025.620(a)

2025(u)(2)	2025.620(b)
2025(u)(3)	2025.620(c)
2025(u)(4)	2025.620(d)
2025(u)(5)	2025.620(e)
2025(u)(6)	2025.620(f)
2025(u)(7)	2025.620(g)
2025(v)	2025.320(f)
2025.5(a)	2025.570(a)
2025.5(b), 1st snt.	2025.570(b)
2025.5(b), 2d snt.	2025.570(c)
2025.5(c)	2025.570(d)
2026(a)	2026.010(a)
2026(b)(1)	2026.010(b)
2026(b)(2)	2026.010(c)
2026(c), 1st snt.	2026.010(d)
2026(c), 2d snt.	2026.010(e)
2026(c), 3d-7th snt.	2026.010(f)
2027(a)	2027.010(a)
2027(b)(1)	2027.010(b)
2027(b)(2)	2027.010(c)
2027(c), 1st ¶	2027.010(d)
2027(c), 2d ¶	2027.010(e)
2028(a)	2028.010
2028(b)	2028.020
2028(c), 1st ¶	2028.030(a)
2028(c), 2d ¶	2028.030(b)
2028(c), 3d ¶	2028.030(c)
2028(c), 4th ¶	2028.030(d)
2028(c), 5th ¶	2028.030(e)
2028(d)(1), 1st & 2d snt.	2028.040(a)
2028(d)(1), 3d-5th snt.	2028.040(b)
2028(d)(1), 2d ¶	2028.040(c)
2028(d)(2), 1st & 2d snt.	2028.050(a)
2028(d)(2), 3d-5th snt.	2028.050(b)
2028(d)(2), 2d ¶	2028.050(c)
2028(e), 1st snt.	2028.060(a)
2028(e), 2d snt.	2028.060(b)
2028(f)	2028.070
2028(g)	2028.080
2029	2029.010
2030(a)	2030.010(a)
2030(b), 1st snt.	2030.020(a)
2030(b), 2d snt.	2030.020(b)

2030(b), 3d snt.	2030.020(c)
2030(c)(1), 1st snt.	2030.030(a)
2030(c)(1), 2d & 3d snt.	2030.030(b)
2030(c)(1), 4th snt.	2030.030(c)
2030(c)(2), 1st ¶ (including items (A)-(C))	2030.040(a)
2030(c)(2), last ¶	2030.040(b)
2030(c)(3)	2030.050
2030(c)(4), 1st snt.	2030.060(a)
2030(c)(4), 2d snt.	2030.060(b)
2030(c)(4), 3d snt.	2030.060(c)
2030(c)(5), 1st & 2d snt.	2030.060(d)
2030(c)(5), 3d snt.	2030.060(e)
2030(c)(5), 4th snt.	2030.060(f)
2030(c)(6)	2030.010(b)
2030(c)(7)	2030.060(g)
2030(c)(8), 1st snt.	2030.070(a)-(b)
2030(c)(8), 2d snt.	2030.070(c)
2030(d)	2030.080
2030(e), 1st ¶	2030.090(a)
2030(e), 2d ¶ (including items (1)-(7))	2030.090(b)
2030(e), next-to-last ¶	2030.090(c)
2030(e), last ¶	2030.090(d)
2030(f), 1st snt.	2030.210(a)
2030(f), 2d snt.	2030.210(b)
2030(f), 3d snt.	2030.210(c)
2030(f)(1), 1st snt.	2030.220(a)
2030(f)(1), 2d snt.	2030.220(b)
2030(f)(1), 3d snt.	2030.220(c)
2030(f)(2)	2030.230
2030(f)(3), 1st snt.	2030.240(a)
2030(f)(3), 2d-4th snt.	2030.240(b)
2030(g), 1st snt.	2030.250(a)
2030(g), 2d & 3d snt.	2030.250(b)
2030(g), 4th snt.	2030.250(c)
2030(h), 1st & 2d snt.	2030.260(a)
2030(h), 3d snt.	2030.260(b)
2030(i), 1st snt.	2030.270(a)
2030(i), 2d snt.	2030.270(b)
2030(i), 3d snt.	2030.270(c)
2030(j), 1st snt.	2030.280(a)
2030(j), 2d & 3d snt.	2030.280(b)
2030(k), 1st ¶	2030.290(a)
2030(k), 2d ¶, 1st snt.	2030.290(b)

2030(k), 2d ¶, 2d-4th snt.	2030.290(c)
2030(l), 1st snt.	2030.300(a)
2030(l), 2d snt.	2030.300(b)
2030(l), 2d ¶	2030.300(c)
2030(l), 3d ¶	2030.300(d)
2030(l), 4th ¶	2030.300(e)
2030(m), 1st ¶	2030.310(a)
2030(m), 2d ¶, 1st & 2d snt.	2030.310(b)
2030(m), 2d ¶, 3d snt.	2030.310(c)
2030(m), 3d ¶	2030.310(d)
2030(n)	2030.510
2031(a), intro. ¶	2031.010(a)
2031(a)(1)	2031.010(b)
2031(a)(2)	2031.010(c)
2031(a)(3)	2031.010(d)
2031(b), 1st snt.	2031.020(a)
2031(b), 2d snt.	2031.020(b)
2031(b), 3d snt.	2031.020(c)
2031(c), 1st snt.	2031.030(a)
2031(c), 2d snt.	2031.030(b)
2031(c), 3d snt. (including items (1)-(4))	2031.030(c)
2031(d)	2031.040
2031(e), 1st snt.	2031.050(a)-(b)
2031(e), 2d snt.	2031.050(c)
2031(f), 1st ¶	2031.060(a)
2031(f), 2d ¶ (including items (1)-(6))	2031.060(b)
2031(f), next-to-last ¶	2031.060(c)
2031(f), last ¶	2031.060(d)
2031(g), 1st ¶	2030.210(a)
2031(g), 2d ¶, 1st snt.	2030.210(b)
2031(g), 2d ¶, 2d snt.	2030.210(c)
2031(g)(1), 1st ¶	2030.220
2031(g)(1), 2d ¶, 1st snt.	2030.280(a)
2031(g)(1), 2d ¶, 2d snt.	2030.280(b)
2031(g)(2)	2030.230
2031(g)(3), 1st snt.	2030.240(a)
2031(g)(3), 2d-4th snt.	2030.240(b)
2031(h), 1st snt.	2030.250(a)
2031(h), 2d & 3d snt.	2030.250(b)
2031(h), 4th snt.	2030.250(c)
2031(i)	2030.260
2031(j), 1st snt.	2030.270(a)
2031(j), 2d snt.	2030.270(b)

2031(j), 3d snt.	2030.270(c)
2031(k), 1st snt.	2030.290(a)
2031(k), 2d & 3d snt.	2030.290(b)
2031(l), 1st ¶	2030.300(a)
2031(l), 2d ¶, 1st snt.	2030.300(b)
2031(l), 2d ¶, 2d-4th snt.	2030.300(c)
2031(m), 1st snt.	2030.310(a)
2031(m), 2d snt.	2030.310(b)
2031(m), 2d ¶	2030.310(c)
2031(m), 3d ¶	2030.310(d)
2031(m), 4th ¶	2030.310(e)
2031(n), 1st ¶	2030.320(a)
2031(n), 2d ¶	2030.320(b)
2031(n), 3d ¶	2030.320(c)
2031.5, 1st snt.	2031.500(a)
2031.5, 2d & 3d snt.	2031.500(b)
2032(a)	2032.020(a)
2032(b), 1st snt.	2032.020(b)
2032(b), 2d snt.	2032.020(c)
2032(b), 3d snt.	2032.010(a)
2032(c)(1)	2032.210
2032(c)(2), 1st snt.	2032.220(a)
2032(c)(2), 2d snt.	2032.220(b)
2032(c)(2), 3d snt.	2032.220(c)
2032(c)(3)	2032.220(d)
2032(c)(4)	2032.220(e)
2032(c)(5), 1st snt.	2032.230(a)
2032(c)(5), 2d snt.	2032.230(b)
2032(c)(6), 1st ¶	2032.240(a)
2032(c)(6), 2d ¶, 1st snt.	2032.240(b)
2032(c)(6), 2d ¶, 2d snt.	2032.240(c)
2032(c)(6), 3d ¶	2032.240(d)
2032(c)(7), 1st ¶	2032.250(a)
2032(c)(7), 2d ¶	2032.250(b)
2032(c)(8), 1st snt.	2032.260(a)
2032(c)(8), 2d snt.	2032.260(b)
2032(d), 1st snt.	2032.310(a)
2032(d), 2d & 3d snt.	2032.310(b)
2032(d), 4th snt.	2032.310(c)
2032(d), 2d ¶, 1st snt.	2032.320(a)
2032(d), 2d ¶, 2d snt.	2032.320(b)-(c)
2032(d), 2d ¶, 3d snt.	2032.320(d)
2032(d), 2d ¶, 4th snt.	2032.320(e)

2032(e)	2032.030
2032(f), 1st ¶	2032.410
2032(f), 2d ¶	2032.420
2032(g)(1), 1st snt.	2032.510(a)
2032(g)(1), 2d snt.	2032.510(b)
2032(g)(1), 3d snt.	2032.510(c)
2032(g)(1), 2d ¶, 1st snt.	2032.510(d)
2032(g)(1), 2d ¶, 2d snt.	2032.510(e)
2032(g)(1), 3d ¶	2032.510(f)
2032(g)(1), 4th ¶	2032.520
2032(g)(2), 1st snt.	2032.530(a)
2032(g)(2), 2d snt.	2032.530(b)
2032(h), 1st snt.	2032.610(a)
2032(h), 2d snt.	2032.610(b)
2032(h), 3d snt.	2032.610(c)
2032(h), 2d ¶	2032.620(a)
2032(h), 3d ¶	2032.620(b)
2032(h), 4th ¶	2032.620(c)
2032(i)	2032.630
2032(j), 1st ¶	2032.640
2032(j), 2d ¶	2032.650(a)
2032(j), 3d ¶	2032.650(b)
2032(j), 4th ¶	2032.650(c)
2032(k)	2032.010(b)
2033(a)	2033.010
2033(b), 1st snt.	2033.020(a)
2033(b), 2d snt.	2033.020(b)
2033(b), 3d snt.	2033.020(c)
2033(c)(1), 1st snt.	2033.030(a)
2033(c)(1), 2d snt.	2033.030(b)
2033(c)(1), 2d ¶	2033.030(c)
2033(c)(2), 1st ¶	2033.040(a)
2033(c)(2), 2d ¶	2033.040(b)
2033(c)(3)	2033.050
2033(c)(4), 1st snt.	2033.060(a)
2033(c)(4), 2d snt.	2033.060(b)
2033(c)(4), 3d snt.	2033.060(c)
2033(c)(5), 1st & 2d snt.	2033.060(d)
2033(c)(5), 3d snt.	2033.060(e)
2033(c)(5), 4th snt.	2033.060(f)
2033(c)(6)	2033.060(g)
2033(c)(7)	2033.060(h)
2033(d)	2033.070

2033(e), 1st ¶	2033.080(a)
2033(e), 2d ¶ (including items (1)-(5))	2033.080(b)
2033(e), next-to-last ¶	2033.080(c)
2033(e), last ¶	2033.080(d)
2033(f), intro. ¶, 1st snt.	2033.210(a)
2033(f), intro. ¶, 2d snt.	2033.210(b)
2033(f), intro. ¶, 3d snt.	2033.210(c)
2033(f), intro. ¶, 4th snt.	2033.210(d)
2033(f)(1), 1st snt.	2033.220(a)
2033(f)(1), 2d snt.	2033.220(b)
2033(f)(1), 3d snt.	2033.220(c)
2033(f)(2), 1st snt.	2033.230(a)
2033(f)(2), 2d-4th snt.	2033.230(b)
2033(g), 1st snt.	2033.240(a)
2033(g), 2d & 3d snt.	2033.240(b)
2033(g), 4th snt.	2033.240(c)
2033(h)	2033.250
2033(i), 1st snt.	2033.260(a)
2033(i), 2d snt.	2033.260(b)
2033(i), 3d snt.	2033.260(c)
2033(i), 4th snt.	2033.260(d)
2033(j), 1st snt.	2033.270(a)
2033(j), 2d & 3d snt.	2033.270(b)
2033(k), 1st ¶	2033.280(a)
2033(k), 2d ¶, 1st snt.	2033.280(b)
2033(k), 2d ¶, 2d & 3d snt.	2033.280(c)
2033(l), 1st snt.	2033.290(a)
2033(l), 2d snt.	2033.290(b)
2033(l), 2d ¶	2033.290(c)
2033(l), 3d ¶	2033.290(d)
2033(l), 4th ¶	2033.290(e)
2033(m), 1st snt.	2033.300(a)
2033(m), 2d snt.	2033.300(b)
2033(m), 3d snt.	2033.300(c)
2033(n), 1st snt.	2033.410(a)
2033(n), 2d & 3d snt.	2033.410(b)
2033(o), 1st snt.	2033.420(a)
2033(o), 2d snt.	2033.420(b)
2033.5(a), 1st snt.	2033.510
2033.5(a), 2d snt.	2033.540(a)
2033.5(b), 1st snt.	2033.530(a)
2033.5(b), 2d snt., 1st clause	2033.530(b)
2033.5(b), 2d snt., 2d clause	2033.540(b)

2033.5(c)	2033.540(c)
2033.5(d)	2033.520(a)
2033.5(e)	2033.520(b)
2033.5(f)	Not continued (obsolete)
2034(a), intro. clause	2034.210, intro. clause
2034(a)(1)	2034.210(a)
2034(a)(2)	2034.210(b)
2034(a)(3)	2034.210(c)
2034(a), last ¶	2034.010
2034(b)	2034.220
2034(c), 1st ¶	2034.230(a)
2034(c), 2d ¶	2034.230(b)
2034(d)	2034.240
2034(e), 1st ¶	2034.250(a)
2034(e), 2d ¶ (including items (1)-(6))	2034.250(b)
2034(e), next-to-last ¶	2034.250(c)
2034(e), last ¶	2034.250(d)
2034(f), intro. ¶	2034.260(a)
2034(f)(1) (including items (A) and (B))	2034.260(b)
2034(f)(2) (including items (A)-(E))	2034.260(c)
2034(g)	2034.270
2034(h), 1st snt.	2034.280(a)
2034(h), 2d snt.	2034.280(b)
2034(h), 3d snt.	2034.280(c)
2034(i), intro. ¶	2034.410
2034(i)(1)	2034.420
2034(i)(2), 1st ¶, 1st snt.	2034.430(a)-(b)
2034(i)(2), 1st ¶, 2d snt.	2034.430(c)
2034(i)(2), 1st ¶, 3d snt.	2034.430(d)
2034(i)(2), 1st ¶, 4th snt.	2034.430(e)
2034(i)(2), 1st ¶, 5th snt.	2034.430(f)
2034(i)(2), 2d ¶, 1st snt.	2034.450(a)
2034(i)(2), 2d ¶, 2d snt.	2034.450(b)
2034(i)(2), 2d ¶, 3d snt.	2034.450(c)
2034(i)(2), 2d ¶, 4th snt.	2034.440
2034(i)(3), 1st snt.	2034.460(a)
2034(i)(3), 2d snt.	2034.460(b)
2034(i)(4), 1st ¶, 1st & 3d snt.	2034.470(a)
2034(i)(4), 1st ¶, 2d & 4th snt.	2034.470(b)
2034(i)(4), 2d ¶, 1st & 2d snt.	2034.470(c)-(d)
2034(i)(4), 2d ¶, 3d snt.	2034.470(e)
2034(i)(4), 3d ¶	2034.470(f)
2034(i)(4), 4th ¶	2034.470(g)

2034(j)	2034.300
2034(k), 1st ¶, 1st snt.	2034.610(a)
2034(k), 1st ¶, 2d & 3d snt.	2034.610(b)
2034(k), 1st ¶, 4th snt.	2034.610(c)
2034(k), 1st ¶, 5th snt.	2034.290(c)
2034(k), 1st ¶, 6th snt.	2034.620(a)-(c)
2034(k), 1st ¶, 7th snt.	2034.620(d)
2034(k), 2d ¶	2034.630
2034(l), 1st snt.	2034.710(a)
2034(l), 2d & 3d snt.	2034.710(b)
2034(l), 4th snt.	2034.710(c)
2034(l), 2d ¶, 1st snt.	2034.720(a)-(c)
2034(l), 2d ¶, 2d snt.	2034.720(d)
2034(l), 3d ¶	2034.730
2034(m)	2034.310
2034(n), 1st snt.	2034.290(a)
2034(n), 2d & 3d snt.	2034.290(b)
2035(a), 1st snt.	2035.010(a)
2035(a), 2d snt.	2035.010(b)
2035(b)	2035.020
2035(c)	2035.030(a)
2035(d), 1st ¶ (including items (1)-(9))	2035.030(b)
2035(d), last ¶	2035.030(c)
2035(e), 1st & 2d snt.	2035.040(a)
2035(e), 3d & 4th snt.	2035.040(b)
2035(e), 5th snt.	2035.040(c)
2035(e), 2d ¶, 1st snt.	2035.040(d)
2035(e), 2d ¶, 2d & 3d snt.	2035.040(e)
2035(f), 1st snt.	2035.050(a)
2035(f), 2d snt.	2035.050(b)
2035(f), 3d snt.	2035.050(c)
2035(g)	2035.060
2036(a)	2036.010
2036(b)	2036.020
2036(c)	2036.030(a)
2036(d)	2036.030(b)
2036(e), 1st snt.	2036.040(a)
2036(e), 2d snt.	2036.040(b)
2036(e), 3d snt.	2036.040(c)
2036(f)	2036.050

SELECTED CONFORMING REVISIONS

1 ☞ **Note.** Enactment of the legislation proposed above would necessitate conforming revisions of
2 numerous other provisions in the codes. We have searched the codes for such provisions and
3 drafted proposed conforming revisions. To conserve resources, the lengthy conforming revisions
4 are not set forth here.

5 The conforming revisions are available on the Commission’s website (www.clrc.ca.gov) by
6 following the “Current Projects” link:

7 (1) Click on “Current Projects.”

8 (2) Scroll down to “Discovery.”

9 (3) Click on “Reorganization of Discovery Statute.”

10 (4) Scroll down and click on “Tentative Recommendation.”

11 (5) Click on “Conforming Revisions.”

12 The conforming revisions are also available in hard copy form from the California Law Revision
13 Commission, 4000 Middlefield Road, Room D-1, Palo Alto, CA 94303-4739.

14 A few conforming revisions warrant special attention and are shown below.

15 **Bus. & Prof. Code § 17083 (amended). Deposition and production of documents**

16 SEC. _____. Section 17083 of the Business and Professions Code is amended to
17 read:

18 17083. The testimony of any witness in any action brought under this chapter
19 may be taken by deposition ~~even though the case is not one specified in Section~~
20 ~~2021 of the Code of Civil Procedure, but otherwise the provisions of Part 4, Title~~
21 ~~3, Chapter 3 of. The provisions of Chapter 3 (commencing with Section 2002) of~~
22 ~~Title 3 of Part 4 of, and the provisions of Title 4 (commencing with Section~~
23 ~~2016.010) of Part 4 of,~~ the Code of Civil Procedure are applicable to the witness,
24 his ~~the~~ testimony and the deposition.

25 In addition, the books and records of any party, or of any such witness, may be
26 subpoenaed into court and introduced into evidence, or introduced, by reference,
27 into evidence, and may be required to be produced at the taking of the deposition
28 of any party or of any such witness and there inquired into.

29 **Comment.** Section 17083 is amended to reflect nonsubstantive reorganization of the rules
30 governing civil discovery. The reference to former Code of Civil Procedure Section 2021 is not
31 continued, because that provision was repealed in 1957 and its substance was not continued. See
32 1939 Cal. Stat. ch. 195, § 1 (former Code Civ. Proc. § 2021, as it existed when Bus. & Prof. Code
33 § 17083 was enacted in 1941); 1957 Cal. Stat. ch. 1904, § 1 (repealing former Code Civ. Proc. §
34 2021).

35 **Gov’t Code § 12963.3 (amended). Depositions**

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

37 12963.3. (a) Depositions taken by the department shall be noticed by issuance
38 and service of a subpoena pursuant to Section 12963.1. If, in the course of the
39 investigation of a complaint, a subpoena is issued and served on an individual or
40 organization not alleged in the complaint to have committed an unlawful practice,

1 written notice of the deposition shall also be mailed by the department to each
2 individual or organization alleged in the complaint to have committed an unlawful
3 practice.

4 (b) A deposition may be taken before any officer of the department who has
5 been authorized by the director to administer oaths and take testimony, or before
6 any other person before whom a deposition may be taken in a civil action pursuant
7 to ~~subdivision (a) of Section 2018~~ Section 2025.320 of the Code of Civil
8 Procedure. The person before whom the deposition is to be taken shall put the
9 witness on oath and shall personally, or by someone acting under the person's
10 direction and in the person's presence, record the testimony of the witness. The
11 testimony shall be taken stenographically and transcribed unless the parties agree
12 otherwise. All objections made at the time of the examination shall be noted on the
13 deposition by the person before whom the deposition is taken, and evidence
14 objected to shall be taken subject to the objections.

15 **Comment.** Subdivision (b) of Section 12963.3 is amended to reflect nonsubstantive
16 reorganization of the rules governing civil discovery.

17 ☞ **Note.** Government Code Section 12963.3(b) refers to “any other person before whom a
18 deposition may be taken in a civil action pursuant to subdivision (a) of Section 2018 of the Code
19 of Civil Procedure.” Conforming this provision is not straightforward, because Code of Civil
20 Procedure Section 2018 pertains to attorney work product and has nothing to do with deposition
21 officers.

22 The problem arises because Government Code Section 12963.3 has not been amended since
23 1981 and thus was not conformed to reflect enactment of the Civil Discovery Act of 1986. The
24 current provision governing deposition officers is Section 2025(k), which corresponds to
25 proposed Section 2025.320. Thus, the conforming revision proposed above refers to proposed
26 Section 2025.320, instead of proposed Section 2018.020 (the provision corresponding to Code of
27 Civil Procedure Section 2018(a)). The Commission solicits comment on this approach.

28 **Ins. Code § 11580.2 (amended). Uninsured and underinsured motorist coverage**

29 SEC. _____. Section 11580.2 of the Insurance Code is amended to read:
30 11580.2. ...

31 (f) The policy or an endorsement added thereto shall provide that the
32 determination as to whether the insured shall be legally entitled to recover
33 damages, and if so entitled, the amount thereof, shall be made by agreement
34 between the insured and the insurer or, in the event of disagreement, by arbitration.
35 The arbitration shall be conducted by a single neutral arbitrator. An award or a
36 judgment confirming an award shall not be conclusive on any party in any action
37 or proceeding between (i) the insured, his or her insurer, his or her legal
38 representative, or his or her heirs and (ii) the uninsured motorist to recover
39 damages arising out of the accident upon which the award is based. If the insured
40 has or may have rights to benefits, other than nonoccupational disability benefits,
41 under any workers' compensation law, the arbitrator shall not proceed with the
42 arbitration until the insured's physical condition is stationary and ratable. In those
43 cases in which the insured claims a permanent disability, the claims shall, unless
44 good cause be shown, be adjudicated by award or settled by compromise and

1 release before the arbitration may proceed. Any demand or petition for arbitration
2 shall contain a declaration, under penalty of perjury, stating whether (i) the insured
3 has a workers' compensation claim; (ii) the claim has proceeded to findings and
4 award or settlement on all issues reasonably contemplated to be determined in that
5 claim; and (iii) if not, what reasons amounting to good cause are grounds for the
6 arbitration to proceed immediately. The arbitration shall be deemed to be a
7 proceeding and the hearing before the arbitrator shall be deemed to be the trial of
8 an issue therein for purposes of issuance of a subpoena by an attorney of a party to
9 the arbitration under Section 1985 of the Code of Civil Procedure. ~~Article 3~~
10 ~~(commencing with Section 2016) of Chapter 3 of Title 3~~ Title 4 (commencing with
11 Section 2016.010) of Part 4 of the Code of Civil Procedure shall be applicable to
12 these determinations, and all rights, remedies, obligations, liabilities and
13 procedures set forth in ~~Article 3~~ Title 4 shall be available to both the insured and
14 the insurer at any time after the accident, both before and after the commencement
15 of arbitration, if any, with the following limitations:

16 (1) Whenever in ~~Article 3~~ Title 4, reference is made to the court in which the
17 action is pending, or provision is made for application to the court or obtaining
18 leave of court or approval by the court, the court which shall have jurisdiction for
19 the purposes of this section shall be the superior court of the State of California, in
20 and for any county which is a proper county for the filing of a suit for bodily
21 injury arising out of the accident, against the uninsured motorist, or any county
22 specified in the policy or an endorsement added thereto as a proper county for
23 arbitration or action thereon.

24 (2) Any proper court to which application is first made by either the insured or
25 the insurer under ~~Article 3~~ Title 4 for any discovery or other relief or remedy, shall
26 thereafter be the only court to which either of the parties shall make any
27 applications under ~~Article 3~~ Title 4 with respect to the same accident, subject,
28 however, to the right of the court to grant a change of venue after a hearing upon
29 notice, upon any of the grounds upon which change of venue might be granted in
30 an action filed in the superior court.

31 (3) A deposition pursuant to ~~Section 2016~~ Chapter 9 (commencing with Section
32 2025.010) of Title 4 of Part 4 of the Code of Civil Procedure may be taken without
33 leave of court, except that leave of court, granted with or without notice and for
34 good cause shown, must be obtained if the notice of the taking of the deposition is
35 served by either party within 20 days after the accident.

36 (4) ~~Paragraph (4) of subdivision (a) of Section 2019~~ Subdivision (d) of Section
37 2019.010 of the Code of Civil Procedure is not applicable to discovery under this
38 section.

39 (5) For the purposes of discovery under this section, the insured and the insurer
40 shall each be deemed to be "a party to the record of any civil action or
41 proceedings," where that phrase is used in paragraph (2) of ~~subdivision (b) of~~
42 ~~Section 2019~~ subdivision (a) of Section 2019.030 of the Code of Civil Procedure.

1 (6) Interrogatories under Section 2030 Chapter 13 (commencing with Section
2 2030.010) of Title 4 of Part 4 of the Code of Civil Procedure and requests for
3 admission under Section 2033 Chapter 16 (commencing with Section 2033.010) of
4 Title 4 of Part 4 of the Code of Civil Procedure may be served by either the
5 insured or the insurer upon the other at any time more than 20 days after the
6 accident without leave of court.

7 (7) Nothing in this section limits the rights of any party to discovery in any
8 action pending or which may hereafter be pending in any court.

9 ...

10 **Comment.** Subdivision (f) of Section 11580.2 is amended to reflect nonsubstantive
11 reorganization of the rules governing civil discovery.

12 ☞ **Note.** Section 11580.2(f)(5) provides “For the purposes of discovery under this section, the
13 insured and the insurer shall each be deemed to be ‘a party to the record of any civil action or
14 proceedings,’ where that phrase is used in paragraph (2) of subdivision (b) of Section 2019 of the
15 Code of Civil Procedure.” It is unclear how to conform this section, because Section 2019(b)(2)
16 does not include the phrase “a party to the record of any civil action or proceedings.”

17 The phrase was included in former Section 2019(b)(2), which provided:

18 (2) Notwithstanding Section 1989, the court may, upon motion on 10 days’ written notice
19 and for good cause shown, make an order requiring a deponent who is *a party to the record of*
20 *any civil action or proceeding* or is a person for whose immediate benefit said action is
21 prosecuted or defended or is at the time of the taking of the deposition an officer, director or
22 managing agent of any such party or person to attend a deposition at a place more than 150
23 miles from the residence of such deponent. In granting or refusing such order, the court shall
24 consider whether the moving party selected the forum, whether the deponent will be present
25 at the trial, the convenience of the deponent, the suitability of discovery through a deposition
26 by written interrogatories or other discovery methods, the number of depositions sought
27 under this section, the expense to the parties of requiring the deposition to be taken within
28 150 miles of the residence of the deponent, the whereabouts of the deponent at the time the
29 deposition is scheduled to be taken, and all other factors tending to show whether or not the
30 interests of justice and the convenience of the parties and witnesses will be served by
31 requiring the deponent to appear for the deposition at a place more than 150 miles from the
32 deponent’s residence. Such order may provide that the party desiring to take such deposition
33 shall pay the reasonable expenses incurred by the deponent in attending such deposition and
34 that the party furnish an undertaking approved by the court to secure such payment and may
35 contain such other terms and conditions as are equitable and just.

36 1982 Cal. Stat. ch. 192, § 1 (emphasis added). The phrase is not included, however, in Section
37 2025(e), which is the current provision governing the location of a deposition. Similarly, the
38 phrase is not included in proposed Sections 2025.250 and 2025.260, which would continue
39 Section 2025(e) without substantive change.

40 Apparently, subdivision (f)(5) was overlooked when Section 11580.2 was conformed to reflect
41 enactment of the Civil Discovery Act of 1986. The amendment of Section 11580.2 proposed
42 above would continue the present state of confusion by replacing the reference to “paragraph (2)
43 of subdivision (b) of Section 2019” with a reference to Section 2019.030(a)(2), the corresponding
44 provision in the proposed new chapter on civil discovery.

45 Ideally, however, the confusing reference should be corrected or eliminated. The Commission
46 solicits comment on the proper treatment of this provision.