

# CALIFORNIA LAW REVISION COMMISSION

*Revised* TENTATIVE RECOMMENDATION

Deposition in Out-of-State Litigation

August 2007

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make 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 to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN **November 9, 2007**.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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## SUMMARY OF REVISED TENTATIVE RECOMMENDATION

The Law Revision Commission proposes to clarify and refine the procedure for obtaining discovery from a witness in this state for purposes of a proceeding pending in another jurisdiction. The recommended legislation is based in part on the Uniform Interstate Depositions and Discovery Act (2007) (“UIDDA”), which was recently approved by the National Conference of Commissioners on Uniform State Laws. The recommended legislation also addresses procedural details not addressed in UIDDA. The Commission solicits comments on these reforms.

Among other things, the recommended legislation would:

- Make clear that discovery for an out-of-state proceeding can be taken from an entity located in California, not just from a natural person.
- Eliminate any doubt that such discovery can include a deposition solely for the production of tangible items.
- Expressly allow an inspection of land or other property for purposes of an out-of-state proceeding.
- Simplify procedure by permitting issuance of a California subpoena to be based on any document from an out-of-state court that commands a person in California to testify or provide other discovery.
- Specify the fee and other procedural requirements for obtaining a subpoena from a California court for discovery in an out-of-state proceeding.
- Direct the Judicial Council to prepare a subpoena form and a subpoena application form for use in obtaining discovery for an out-of-state proceeding (or modify an existing form to expressly address that situation).
- Make clear that under specified circumstances local counsel can issue a subpoena for discovery in an out-of-state proceeding.

The recommended legislation would also clarify the procedure for resolving a dispute relating to discovery for an out-of-state proceeding. To resolve such a dispute in a California court, a litigant or deponent would need to file a petition in the superior court for the county in which the discovery is being conducted. The recommended legislation would specify the proper fee, briefing schedule, hearing date, and other procedural details.

By providing guidance on these points and related matters, the recommended legislation would help to prevent confusion, disputes, unnecessary expenditure of resources, and inconsistent treatment of litigants. The recommended reforms would not only benefit litigants in out-of-state proceedings, but would also assist California court personnel, process servers, witnesses, and others affected by discovery conducted for out-of-state litigation.

This recommendation was prepared pursuant to Resolution Chapter 100 of the Statutes of 2007.

## DEPOSITION IN OUT-OF-STATE LITIGATION

1 The Law Revision Commission is engaged in a study of civil discovery and has  
2 issued several recommendations on that topic.<sup>1</sup> In this tentative recommendation,  
3 the Commission proposes to revise the law to provide clear guidance on the  
4 procedure that litigants, courts, and witnesses are to follow when discovery is  
5 taken in California for purposes of an out-of-state proceeding.

6 The recommended reforms are based in part on the Uniform Interstate  
7 Depositions and Discovery Act (2007) (“UIDDA”), which was recently approved  
8 by the National Conference of Commissioners on Uniform State Laws  
9 (“NCCUSL”).<sup>2</sup> The recommended legislation also addresses procedural details  
10 that are not addressed in UIDDA.

11 The Commission solicits comments on these reforms.

### 12 Existing Law

13 Code of Civil Procedure Section 2029.010<sup>3</sup> governs the procedure for deposing<sup>4</sup>  
14 a witness in California for purposes of a proceeding pending in another  
15 jurisdiction. The provision applies when an out-of-state court issues a mandate,<sup>5</sup>

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1. *Civil Discovery: Correction of Obsolete Cross-References*, 34 Cal. L. Revision Comm’n Reports 161 (2004); *Civil Discovery: Statutory Clarification and Minor Substantive Improvements*, 34 Cal. L. Revision Comm’n Reports 137 (2004); *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm’n Reports 789 (2003).

Any California Law Revision Commission document referred to in this recommendation can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

2. In response to concerns about how the California courts were handling discovery for out-of-state litigation, the Commission began studying this topic in July 2005. NCCUSL began drafting a uniform act on the topic soon afterwards. The Commission decided to await the completion of NCCUSL’s study before finalizing its own recommendation.

3. 2004 Cal. Stat. ch. 182, § 23. Section 2029.010 continues former Code of Civil Procedure Section 2029 without change. See Code Civ. Proc. § 2029.010 Comment.

4. In California, a “deposition” is defined as “a written declaration, under oath, made upon notice to the adverse party, for the purpose of enabling him to attend and cross-examine.” Code Civ. Proc. § 2004. The term “deposition” is used to refer to: (1) a pretrial proceeding in which a witness orally testifies and the answers are transcribed (Code Civ. Proc. §§ 2020.310, 2025.010-2025.620), (2) a pretrial proceeding in which a witness answers written questions under oath (Code Civ. Proc. §§ 2028.010-2028.080), (3) a pretrial proceeding in which a witness testifies and produces documents or other tangible things (Code Civ. Proc. §§ 2020.510, 2025.010-2025.620), and (4) a pretrial proceeding in which a witness is only required to produce business records for copying (Code Civ. Proc. §§ 2020.410-2020.440; Evid. Code §§ 1560-1567).

5. A “mandate” is a “judicial command.” Cochran’s Law Lexicon (5th ed. 1973).

1 writ,<sup>6</sup> letters rogatory,<sup>7</sup> letter of request,<sup>8</sup> or commission<sup>9</sup> requesting that a person  
2 in California testify or produce materials for use in an out-of-state case. It states:

3       2029.010. Whenever any mandate, writ, letters rogatory, letter of request, or  
4 commission is issued out of any court of record in any other state, territory, or  
5 district of the United States, or in a foreign nation, or whenever, on notice or  
6 agreement, it is required to take the oral or written deposition of a natural person  
7 in California, the deponent may be compelled to appear and testify, and to  
8 produce documents and things, in the same manner, and by the same process as  
9 may be employed for the purpose of taking testimony in actions pending in  
10 California.

11 Under this provision, a California court can use its subpoena power to compel a  
12 witness in the state to submit to a deposition for purposes of a proceeding pending  
13 elsewhere.<sup>10</sup> Because an out-of-state tribunal may be unable to compel discovery  
14 from a non-party witness located in California, the provision can be critical in  
15 ascertaining the truth and achieving justice in an out-of-state proceeding.<sup>11</sup> The  
16 assistance that the provision extends to other jurisdictions may in turn prompt such  
17 jurisdictions to reciprocate with respect to cases pending in California.<sup>12</sup>

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6. A “writ” is a “court’s written order, in the name of a state or other competent legal authority, commanding the addressee to do or refrain from doing some specified act.” Black’s Law Dictionary (8th ed. 2004).

7. The term “letters rogatory” is synonymous with “letter of request.” It refers to a “document issued by one court to a foreign court, requesting that the foreign court (1) take evidence from a specific person within the foreign jurisdiction or serve process on an individual or corporation within the foreign jurisdiction and (2) return the testimony or proof of service for use in a pending case.” Black’s Law Dictionary 916 (8th ed. 2004).

8. For what constitutes a “letter of request,” see *supra* note 7.

9. A “commission” is a “warrant or authority, from the government or a court, that empowers the person named to execute official acts.” Black’s Law Dictionary (8th ed. 2004).

10. State Bar-Judicial Council Joint Commission on Discovery, Proposed California Civil Discovery Act of 1986, *Reporter’s Note to Section 2029*, at 59 (Jan. 1986) (hereafter, “State Bar-Judicial Council Report”).

11. Mullin, Jr., *Interstate Deposition Statutes: Survey and Analysis*, 11 U. Balt. L. Rev. 1, 2 (1981).

12. State Bar-Judicial Council Report, *supra* note 10, at 59. Section 2029.010 is similar to the Uniform Foreign Depositions Act (“UFDA”), which was approved in 1920 by NCCUSL and the American Bar Association. Quite a number of states have adopted UFDA or a variant of it. See, e.g., Fla. Stat. Ann. § 92.251; Ga. Code Ann. § 24-10-110 to 24-10-112; Md. Code Ann., Cts. & Jud. Proc. §§ 9-401 to 9-403; Nev. Rev. Stat. §§ 53.050-53.070; N.Y. C.P.L.R. 3102(e); Ohio Rev. Code Ann. § 2319.09; Ore. R. Civ. Proc. 38(C); S.D. Codified Laws § 19-5-4; Tenn. Code Ann. § 24-9-103; Va. Code Ann. § 8.01-411 to 8.01-412.1; Wyo. Stat. Ann. § 1-12-115; see also La. Rev. Stat. Ann. § 13:3821-13:3822, 13:3824; Mo. Stat. Ann. § 492.270; Mo. R. Civ. Proc. 57.08; Neb. R. Civ. Disc. 28(e); N.D. R. Civ. Proc. 45(a)(3); N.H. Rev. Stat. Ann. §§ 517:18, 517-A:1; S.C. R. Civ. Proc. 28(d); Tex. Civ. Prac. & Rem. Code Ann. § 20.002; Utah R. Civ. Proc. 26(h).

Other states have not adopted UFDA but also extend comity with regard to an in-state deposition for purposes of an out-of-state proceeding. See *infra* note 14.

1 **Inadequacies of Existing Law**

2 Section 2029.010 does not specify the details of the procedure for issuing a  
3 subpoena to take a deposition in California for purposes of an out-of-state  
4 proceeding. It is not clear from the statutory text what type of paper the deposing  
5 party must submit to the court, whether that party must pay a fee and, if so, what  
6 fee applies, whether an attorney (rather than the court) may issue a subpoena, what  
7 format to use for the subpoena, and whether it is necessary to retain local  
8 counsel.<sup>13</sup> Because the provision applies to a “natural person,” it is also  
9 questionable whether an organization located in California can be deposed for an  
10 out-of-state proceeding. The statute covers a deposition in which the witness is  
11 required to produce documents as well as testify, but is ambiguous as to whether it  
12 covers a deposition solely for the production of documents. Its applicability to an  
13 inspection of land or other premises is also debatable.<sup>14</sup>

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13. Code of Civil Procedure Section 1986 provides some additional guidance but does not fully address the issues raised. It states:

1986. A subpoena is obtainable as follows:

(a) To require attendance before a court, or at the trial of an issue therein, or upon the taking of a deposition in an action or proceeding pending therein, it is obtainable from the clerk of the court in which the action or proceeding is pending, or if there is no clerk then from a judge or justice of such court.

(b) *To require attendance before a commissioner appointed to take testimony by a court of a foreign country, or of the United States, or of any other state in the United States, or before any officer or officers empowered by the laws of the United States to take testimony, it may be obtained from the clerk of the superior court of the county in which the witness is to be examined.*

(c) To require attendance out of court, in cases not provided for in subdivision (a), before a judge, justice, or other officer authorized to administer oaths or take testimony in any matter under the laws of this state, it is obtainable from the judge, justice, or other officer before whom the attendance is required.

If the subpoena is to require attendance before a court, or at the trial of an issue therein, it is obtainable from the clerk, as of course, upon the application of the party desiring it. *If it is obtained to require attendance before a commissioner or other officer upon the taking of a deposition, it must be obtained, as of course, from the clerk of the superior court of the county wherein the attendance is required upon the application of the party requiring it.*

(Emphasis added.) Assuming that the last sentence of Section 1986 is meant to apply not only to a deposition subpoena for a California case but also to a deposition subpoena for an out-of-state proceeding, it is consistent with but less detailed than the procedure proposed by the Commission specifically for the latter situation.

14. Like Section 2029.010, UFDA does not specify the details of the procedure for issuing a subpoena to take a deposition in a state for purposes of a proceeding pending in another state. In contrast, Section 3.02 of the Uniform Interstate and International Procedure Act (“UIIPA”) is more specific in some respects.

UIIPA was approved by NCCUSL in 1962 and was intended to supersede UFDA. It has only been adopted or essentially adopted in a few jurisdictions. See Ind. R. Trial Proc. 28(E); Mass. Gen. Laws ch. 223A, § 11; Mich. Comp. Laws § 600.1852; 42 Pa. Cons. Stat. § 5326; see also La. Rev. Stat. Ann. §§ 13:3821-13:3822, 13:3824 (adopting UIIPA Section 3.02, but also retaining version of UFDA). NCCUSL withdrew UIIPA in 1977. See NCCUSL, Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings of the Annual Conference Meeting in its 105th Year, Table IV, at 578 (1996). For this reason, and because it was not widely adopted, Section 3.02 of UIIPA is of limited value as a model for nationwide uniformity.

1 Further, the statute does not make clear how to seek relief when a dispute arises  
2 in a deposition taken in California for purposes of an out-of-state proceeding. The  
3 proper enforcement procedure is particularly uncertain when a deposition is taken  
4 on notice or agreement without issuance of a California subpoena.

5 Because the statute fails to provide guidance on these points, California courts  
6 vary widely in how they handle such matters.<sup>15</sup> This inconsistent and unpredictable  
7 treatment is unfair.

8 To ensure even-handedness and prevent confusion, the Law Revision  
9 Commission proposes to repeal the provision and replace it with a new set of  
10 provisions, based in part on UIDDA. The new provisions would give guidance as  
11 detailed below. The recommended reforms to clarify and improve the process will  
12 not only benefit litigants in out-of-state proceedings, but will also assist California  
13 court personnel, process servers, witnesses, and others affected by application of  
14 the provision.

### 15 **Recommended Reforms**

16 The Commission proposes clarifications and improvements relating to: (1) the  
17 types of deponent permitted, (2) the types of discovery permitted, (3) which out-

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Many states have provisions that do not track either UFDA or UIIPA Section 3.02. There is great variety among these. See Ala. R. Civ. Proc. 28(c); Alaska R. Civ. Proc. 27(c); Ariz. R. Civ. Proc. 30(h); Ark. R. Civ. Proc. 28(c); Conn. Gen. Stat. § 52-155; Conn. R. Superior Ct. Civ. Proc. § 13-28; Del. Code Ann. tit. 10, § 4311; Haw. Rev. Stat. § 624-27; Idaho R. Civ. Proc. 28(e); Ill. Supreme Ct. R. 204(b); Iowa Code § 622.84; Kan. Stat. Ann. § 60-228(d); Ky. R. Civ. Proc. 28.03; Me. R. Civ. Proc. 30(h); Minn. R. Civ. Proc. 45.04; Miss. R. Civ. Proc. 45(a)(2); Mont. R. Civ. Proc. 28(d); N.J. R. Civ. Prac. 4:11-4; N.M. Stat. Ann. § 38-8-1; N.C. R. Civ. Proc. 28(d); Okla. Stat. Ann. tit. 12, § 2004.1(A)(2); R.I. Gen. Laws § 9-18-11; Vt. Stat. Ann. tit. 12, § 1248; Wash. Superior Ct. Civ. R. 45(d)(4); W. Va. R. Civ. Proc. 28(d); Wisc. Stat. § 887.24; see also Bushnell, *How To Take an Out-of-State Deposition*, 14 Utah Bar J. 28, 28 (2001) (explaining that “each state has its own peculiar requirements”); Mullin, Jr., *supra* note 11, at 52 (noting “the numerous varieties of interstate deposition statutes, their inconsistencies, and their ambiguities”). There does not seem to be any uniformity in how other states handle the points that require clarification here in California.

15. A recent Texas case in which discovery was taken in several California counties provides a good illustration of the disparity in treatment. In that case, a clerk in San Mateo County Superior Court issued a subpoena simply upon presentation of documentation from the Texas court. No fee was required. The same thing happened in San Diego County Superior Court.

In San Francisco County Superior Court, however, the request for a subpoena was repeatedly rejected. The clerk did not issue the subpoena until after the applicant presented certified documentation from the Texas court, hired a California attorney to sign a civil case cover sheet and prepare a petition and declaration, paid the full fee for filing a new case, and complied with other requirements orally conveyed by the clerk. See Email from Tony Klein to Barbara Gaal (Aug. 6, 2007) (Commission Staff Memorandum 2007-35, Exhibit pp. 1-17).

For further examples, see Email from Tony Klein to Barbara Gaal (April 25, 2006) (Second Supplement to Commission Staff Memorandum 2006-7, Exhibit p. 3); Email from Kristen Tsangaris to Barbara Gaal (Dec. 28, 2005) (Commission Staff Memorandum 2006-7, Exhibit p. 9); Email from Tony Klein to Barbara Gaal (July 6, 2005) (Commission Staff Memorandum 2005-26, Exhibit pp. 1-3); R. Best, C.C.P. Revisions: California Subpoena for Foreign State Action (2004) (Commission Staff Memorandum 2005-26, Exhibit pp. 4-6).

1 of-state documents are acceptable, (4) other aspects of the procedure for issuing a  
2 subpoena that compels discovery for an out-of-state proceeding, (5) the use of  
3 local counsel in conducting such discovery, and (6) the procedure for resolving a  
4 dispute arising in connection with discovery.

5 ***Type of Deponent***

6 By its terms, Section 2029.010 is limited to “the oral or written deposition of a  
7 natural person in California ....” This limitation was deliberately imposed in the  
8 Civil Discovery Act of 1986.<sup>16</sup> The drafters’ apparent concern was that some  
9 jurisdictions might not permit a deposition of an organization (as opposed to a  
10 natural person) and litigants might try to subvert such a restriction by seeking to  
11 depose an organization in California instead of the forum state.<sup>17</sup>

12 California appears to be unusual and perhaps unique in its approach to this point.  
13 The Commission is not aware of any statute comparable to Section 2029.010 that  
14 expressly applies only to a deposition of a natural person.

15 As a matter of policy, deposing an organization located in California may be just  
16 as important to the pursuit of truth as deposing an individual who resides in  
17 California. UIDDA recognizes as much, by permitting discovery from “a  
18 person,”<sup>18</sup> and defining “person” to mean “an individual, corporation, limited  
19 liability company, association, joint venture, public corporation, government or  
20 governmental subdivision, agency or instrumentality, or any other legal or  
21 commercial entity.”<sup>19</sup> The Commission recommends that California follow  
22 UIDDA’s approach on this point.<sup>20</sup>

23 ***Type of Discovery Sought***

24 From the statutory language, it is clear that Section 2029.010 encompasses not  
25 only a deposition requiring testimony alone, but also one requiring both testimony  
26 and the production of tangible evidence. It is ambiguous, however, whether the  
27 language encompasses a deposition in which no testimony is required, only the  
28 production of documents or other tangible evidence.<sup>21</sup> It is also ambiguous  
29 whether the language encompasses a request to inspect land or other premises.

30 In contrast, UIDDA clearly encompasses a deposition that is solely for the  
31 production of tangible items.<sup>22</sup> UIDDA also expressly encompasses a request to

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16. State Bar-Judicial Council Report, *supra* note 10, at 59.

17. See *id.*

18. UIDDA § 5.

19. UIDDA § 2(3).

20. See proposed Code Civ. Proc. §§ 2029.200(c), 2029.500 *infra*.

21. For key provisions governing such a deposition, see Code Civ. Proc. §§ 2020.010(a)(3), 2020.410-2020.440.

22. UIDDA §§ 2(5), 5.

1 inspect land or other premises.<sup>23</sup> The Commission recommends that California  
2 follow UIDDA’s approach on these points.<sup>24</sup>

3 ***Acceptable Out-of-State Documents***

4 By its terms, Section 2029.010 does not apply unless (1) a court of another  
5 jurisdiction has issued a mandate, writ, letters rogatory, letter of request, or  
6 commission, or (2) the deposition of a natural person in California is required by  
7 notice or agreement. If neither of these requirements is satisfied, a California court  
8 lacks authority to issue a subpoena under the statute.

9 It may be costly and time-consuming, however, to obtain a letter of request or  
10 other document enumerated in the statute. To eliminate unnecessary expense and  
11 delay, UIDDA simply requires submission of a “subpoena” from a court of  
12 record<sup>25</sup> of another jurisdiction.<sup>26</sup> “Subpoena” is broadly defined as:

13 ... a document, *however denominated*, issued under authority of a court of record  
14 requiring a person to:

15 (A) attend and give testimony at a deposition;

16 (B) produce and permit inspection and copying of designated books,  
17 documents, records, electronically stored information, or tangible things in the  
18 possession, custody, or control of the person; or

19 (C) permit inspection of premises under the control of the person.<sup>27</sup>

20 The Commission agrees that the focus should be on the function served by a  
21 document, not its name or format. Any document from an out-of-state court that  
22 commands a person in California to testify or provide another form of discovery  
23 should be sufficient for purposes of obtaining a California subpoena compelling  
24 such discovery. It should just be necessary to provide assurance that the document  
25 is what it purports to be. That could be achieved by submitting either the original  
26 or a true and correct copy.

27 The Commission therefore recommends that California adopt UIDDA’s  
28 definition of “subpoena” in this context<sup>28</sup> and UIDDA’s requirement that a  
29 “subpoena” be submitted to the California court from which a subpoena is  
30 requested.<sup>29</sup> Either the original or a true and correct copy would suffice.<sup>30</sup>

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23. *Id.*

24. See proposed Code Civ. Proc. §§ 2029.200(e), 2029.500 *infra*.

25. UIDDA only applies to a discovery request in a proceeding conducted in a court of record, not to other proceedings such as an arbitration. See UIDDA § 3 comment (as presented for discussion on July 27, 2007). The recommended legislation takes the same approach. See proposed Code Civ. Proc. § 2029.200 *infra*.

26. UIDDA § 3; see also UIDDA § 2(2) (defining “foreign subpoena”).

27. UIDDA § 2(5) (emphasis added).

28. See proposed Code Civ. Proc. § 2029.200 *infra*.

29. See proposed Code Civ. Proc. § 2029.300 *infra*.



1 ***Other Aspects of the Procedure for Issuance of a Subpoena By a California Court***

2 Aside from having to present one of the enumerated documents, it is not  
3 altogether clear what a litigant must do to obtain a subpoena from a California  
4 court under Section 2029.010. The requirements reportedly differ from court to  
5 court and sometimes even from clerk to clerk.<sup>31</sup> In some instances, a clerk will  
6 issue a subpoena on mere presentation of the original or a copy of one of the  
7 documents listed in the statute. Other times, a court may require greater formality,  
8 such as the filing of a formal petition or civil case cover sheet, or attendance at a  
9 hearing.<sup>32</sup>

10 There is also great disparity in the fees California courts charge for issuance of a  
11 subpoena to take a deposition in the state for purposes of an out-of-state  
12 proceeding. Some courts charge a first appearance fee and at least one court  
13 charges multiple first appearance fees if a litigant seeks more than one subpoena.  
14 Other courts require more modest fees.<sup>33</sup>

15 The Commission recommends that the procedure for obtaining a California  
16 subpoena for purposes of an out-of-state proceeding be clear, simple, and uniform  
17 from county to county. Under UIDDA, submission of a subpoena from another  
18 jurisdiction<sup>34</sup> would be sufficient to compel the clerk of a court to issue a subpoena

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30. *Id.* A true and correct copy of the required document should be sufficient. It would not be appropriate to insist on the original or a certified copy, because the original might not be accessible to the litigant requesting the subpoena nor in the custody of a court or other entity that could provide a certified copy.

31. See sources cited in note 15 *supra*.

32. Like Section 2029.010, many of the comparable statutes of other states are silent regarding the proper procedural approach. The statutes that do address such details vary in the degree of formality they require. In some states, a judge must issue the subpoena, not the court clerk. See, e.g., Mich. R. Civ. Proc. 2.305(E); Ala. R. Civ. Proc. 28(c); Ky. R. Civ. Proc. 28.03; N.C. R. Civ. Proc. 28(d); Wash. Superior Ct. Civ. R. 45(d)(4). Other states use a less complicated approach. See, e.g., Ariz. R. Civ. Proc. 30(h); Mont. R. Civ. Proc. 28(d); Miss. R. Civ. Proc. 45(a)(2); N.D. R. Civ. Proc. 45(a)(3); Utah R. Civ. Proc. 26(h).

33. Email from Tony Klein to Barbara Gaal (Aug. 6, 2007) (Commission Staff Memorandum 2007-35, Exhibit pp. 1-17); Email from Tony Klein to Barbara Gaal (July 6, 2005) (Commission Staff Memorandum 2005-26, Exhibit pp. 1-3); see also Email from Tony Klein to Barbara Gaal (April 25, 2006) (Second Supplement to Commission Staff Memorandum 2006-7, Exhibit p. 3); Email from Kristen Tsangaris to Barbara Gaal (Dec. 28, 2005) (Commission Staff Memorandum 2006-7, Exhibit p. 9).

The Uniform Civil Fees and Standard Fee Schedule Act of 2005 does not expressly address what fee to charge in this situation. See 2005 Cal. Stat. ch. 75.

34. UIDDA only applies with respect to litigation pending in another “State,” which is defined as “a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, [federally recognized Indian tribes], or any territory or insular possession subject to the jurisdiction of the United States.” (Brackets in original.) In contrast, the recommended legislation would also apply to litigation pending in a foreign nation. See proposed Code Civ. Proc. § 2029.200 & Comment *infra*. In this respect, the recommended legislation is similar to Section 2029.010, which expressly applies to a “mandate, writ, letters rogatory, letter of request, or commission ... issued out of any court of record ... in a foreign nation ...” If the recommended legislation did not address litigation pending in a foreign nation, California courts would have no guidance on how to handle a discovery request relating to such litigation.

1 with the same terms under the authority of that court.<sup>35</sup> UIDDA does not specify a  
2 fee for the service, but contemplates that there will be one.<sup>36</sup> UIDDA also  
3 recognizes that it might be helpful to provide a short transmittal letter along with  
4 the out-of-state subpoena, which would advise the clerk that a local subpoena is  
5 being sought and cite the state statute authorizing issuance of such a subpoena.<sup>37</sup>

6 The Commission recommends a similar but not identical approach. To obtain a  
7 subpoena from a California court compelling discovery for an out-of-state case, a  
8 party would have to: (1) submit the original or a true and correct copy of a  
9 subpoena from the jurisdiction where the case is pending,<sup>38</sup> (2) pay a fee of \$20  
10 per subpoena, which is comparable to the fee for issuing a commission to take an  
11 out-of-state deposition,<sup>39</sup> and (3) submit an application on a form prescribed by the  
12 Judicial Council.<sup>40</sup> The proper court for filing the application would be the  
13 superior court of the county in which the discovery is to be taken.<sup>41</sup>

14 The content of the application form would be left to the Judicial Council to  
15 develop, perhaps drawing on requirements stated in some of the more detailed  
16 statutes from other states.<sup>42</sup> The intent is to prevent confusion, ensure that court  
17 clerks receive all necessary information, and draw attention to applicable  
18 requirements for taking the requested discovery in California.<sup>43</sup> This would  
19 streamline the process for litigants, court clerks, process servers, attorneys, and  
20 other affected parties.

21 To further streamline the process, the proposed law would also direct the  
22 Judicial Council to prepare one or more subpoena forms that include clear

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35. UIDDA § 3.

36. UIDDA § 3 comment (as presented for discussion on July 27, 2007).

37. *Id.*

38. See proposed Code Civ. Proc. § 2029.300 *infra*.

39. See proposed amendment to Gov't Code § 70626 *infra*.

40. See proposed Code Civ. Proc. §§ 2029.300, 2029.390 *infra*.

41. See proposed Code Civ. Proc. §§ 2029.300 *infra*. See also Code Civ. Proc. § 1986.

42. See, e.g., Ariz. R. Civ. Proc. 30(h); Me. R. Civ. Proc. 30(h).

43. These objectives might be achieved by a simple form that would:

- Include a space at the top for indicating the caption and case number of the out-of-state case.
- Include another space for indicating the name of the court in which the application is filed.
- State that the applicant is requesting issuance of a subpoena pursuant to Code of Civil Procedure Sections 2029.100-2029.900.
- Require the applicant to attach the document from the out-of-state tribunal requesting discovery.
- Require the applicant to declare under penalty of perjury that the attached document is a true and correct copy of what it purports to be.
- Require the applicant to attach a California subpoena that is ready for the court to issue with identical terms as the out-of-state document.
- Perhaps also alert the applicant to requirements such as the necessary fee, California rules governing service of process, and applicable witness fees.

1 instructions for use in issuance of a subpoena for discovery in an out-of-state  
2 proceeding.<sup>44</sup> The Judicial Council would have the option of either creating new  
3 forms or modifying existing forms to meet this requirement.<sup>45</sup> To ensure that the  
4 deponent has key information to seek protection if needed, the subpoena would  
5 have to bear the caption and case number of the out-of-state case to which it  
6 relates, as well as the name of the superior court that authorized the discovery and  
7 has jurisdiction in the event of a problem.

#### 8 ***Retention of Local Counsel***

9 Section 2029.010 does not say whether it is necessary for a party to retain local  
10 counsel to be able to depose a witness in California for a proceeding pending in  
11 another jurisdiction. But there is other guidance on that point.

12 By statute, a person may not practice law in California unless the person is an  
13 active member of the State Bar.<sup>46</sup> A recently adopted rule of court makes clear,  
14 however, that under specified conditions it is permissible for an attorney duly  
15 licensed to practice in another state to perform litigation tasks in California on a  
16 temporary basis for a proceeding pending in another jurisdiction.<sup>47</sup>

17 The drafters of this rule specifically considered the situation in which an out-of-  
18 state attorney deposes a witness in California for purposes of an out-of-state  
19 proceeding.<sup>48</sup> Thus, if a party is represented by an out-of-state attorney in an out-  
20 of-state proceeding under the conditions specified in the rule, the party does not  
21 have to retain local counsel to be able to depose a witness in California. Further, if  
22 a party is self-represented in an out-of-state proceeding, the party does not have to

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44. See proposed Code Civ. Proc. § 2029.390 *infra*.

45. In many respects, the existing subpoena forms are already suitable for use when a person seeks to depose a California witness for purposes of an out-of-state proceeding. But portions of those forms are not. For instance, it is unclear what caption and case number to include, and some of the statutory references in some of the forms are plainly inapplicable to a deposition for purposes of an out-of-state proceeding (e.g., the form Deposition Subpoena for Personal Appearance includes a box for indicating that “This videotape deposition is intended for possible use at trial under Code of Civil Procedure section 2025.620(d).”) Although the necessary adjustments may be minor, it would be beneficial to have the Judicial Council review the subpoena forms with out-of-state litigation in mind.

46. Bus. & Prof. Code § 6125.

47. Cal. R. Ct. 966. An attorney who temporarily practices law in California pursuant to this rule thereby submits to the jurisdiction of the State Bar and the state courts to the same extent as a member of the State Bar. The attorney is also subject to the laws of the State of California relating to the practice of law, the State Bar Rules of Professional Conduct, the rules and regulations of the State Bar, and the California Rules of Court. *Id.*

For a case holding that Business and Professions Code Section 6125 did not apply to legal services provided in California by out-of-state counsel to a non-California resident, see *Estate of Condon*, 65 Cal. App. 4th 1138, 76 Cal. Rptr. 2d 922 (1998).

48. California Supreme Court Advisory Task Force on Multijurisdictional Practice, Final Report and Recommendations, at 24 (Jan. 7, 2002).

1 retain local counsel to be able to depose a witness in California.<sup>49</sup> Local counsel  
2 may be needed, however, if a discovery dispute arises in a deposition for an out-  
3 of-state proceeding and it is necessary to appear in a California court to resolve the  
4 dispute.

5 Because these matters are already governed by other California law, it might not  
6 be necessary to address them in this proposal.<sup>50</sup> But UIDDA includes a sentence  
7 stating that the “request for an issuance of a subpoena in this state under this act  
8 shall not constitute making an appearance in the courts of this state.”<sup>51</sup> This  
9 sentence was included at the request of NCCUSL delegates from other states, in  
10 which there might not be as much guidance on authorized practice of law as there  
11 is in California. The sentence is included in the recommended legislation,<sup>52</sup>  
12 because omitting it might trigger concerns that the rule is different in California.

### 13 *Issuance of a Subpoena By Counsel*

14 For an action pending in California, an attorney of record may issue a subpoena  
15 instead of having to obtain a subpoena from the court.<sup>53</sup> Section 2029.010 does not  
16 specify, however, whether an attorney may issue a subpoena to depose a witness  
17 in California for a proceeding pending in another jurisdiction.

18 The Commission proposes to add a new provision that would make clear that an  
19 active member of the California Bar retained to represent a party in an out-of-state  
20 proceeding may issue a deposition subpoena pursuant to the statute for purposes of  
21 that proceeding.<sup>54</sup> The proposed law would not extend that privilege to an out-of-  
22 state attorney. It seems reasonable to require the involvement of either a California  
23 court or a California attorney to issue process under the authority of the State of  
24 California.<sup>55</sup>

### 25 *Discovery Dispute*

26 If a dispute arises regarding discovery conducted in California for a proceeding  
27 pending elsewhere, it may be necessary for the deponent, a party, or other

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49. See *Birbrower v. Superior Court*, 17 Cal. 4th 119, 127, 70 Cal. Rptr. 2d 304, 949 P.2d 1 (1998) (“[A]lthough persons may represent themselves and their own interests regardless of State Bar membership, no one but an active member of the State Bar may practice law for another person in California.”).

50. To assist persons involved in discovery for an out-of-state case, the relevant authorities would be referenced in the Comments to proposed Code of Civil Procedure Sections 2029.300 and 2029.350 *infra*.

51. UIDDA § 3.

52. See proposed Code Civ. Proc. § 2029.300 *infra*.

53. Code Civ. Proc. § 1985(c).

54. See proposed Code Civ. Proc. § 2029.350 *infra*.

55. Contrary to the proposed approach, Iowa seems to permit an out-of-state attorney to issue a subpoena under Iowa authority that is directed to a witness within the state. See Iowa Code Ann. § 622.84(1). That appears to be an unusual position.

1 interested person to seek relief in court. Section 2029.010 does not provide  
2 guidance on the proper procedure to follow in that situation.

3 The proposed law would eliminate this ambiguity. If the dispute involves a  
4 person located in California, any request for relief would have to comply with  
5 California law and be filed in the superior court of the county in which discovery  
6 is to be conducted.<sup>56</sup> That would further the state’s interest in protecting its  
7 residents from unreasonable or unduly burdensome discovery requests. If the  
8 dispute does not involve a person located in California, relief could be sought  
9 either in the foreign jurisdiction or in the superior court of the county in which  
10 discovery is to be conducted.<sup>57</sup>

11 UIDDA appears to take essentially the same approach. The pertinent text does  
12 not draw a distinction between a dispute that affects the deponent and one that  
13 does not, but the corresponding Comment does.<sup>58</sup>

14 Upon seeking relief in a California court, the petitioner would have to pay a first  
15 appearance fee,<sup>59</sup> as would each person who responds to the petition.<sup>60</sup> The amount  
16 of these first appearance fees would be \$320, the same as the corresponding first  
17 appearance fees for an unlimited civil case pending in a California court.<sup>61</sup> This fee  
18 amount is appropriate because resolving the dispute might involve difficult choice-  
19 of-law issues or other complications arising because the discovery in question is  
20 being conducted for an out-of-state case, not a California case. Additionally,  
21 although the matter consists of a discovery dispute rather than an entire case, it

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56. See proposed Code Civ. Proc. § 2029.600(a) *infra*. A request for relief pursuant to this section would be denominated a “petition,” not a “motion,” because there would not be a pending California case in which to file a “motion.”

For example, suppose a party to an out-of-state proceeding subpoenas personal records of a nonparty consumer under Code of Civil Procedure Section 1985.3 and the nonparty consumer serves a written objection to production as authorized by the statute. To obtain production, the subpoenaing party would have to file a “petition” to enforce the subpoena, not a “motion” as Section 1985.3(g) prescribes for a case pending in California. See proposed Code Civ. Proc. § 2029.600(b) *infra*.

57. See proposed Code Civ. Proc. § 2029.600(a) *infra*. Sometimes it may be most appropriate to seek relief in the out-of-state tribunal, because that tribunal is familiar with the parties, the facts of the case, and the history of the litigation. On other occasions, it may be convenient to seek relief in a California court, as when a deposition is in progress and it would be easiest for the participants to appear before a local court.

58. See UIDDA § 6 (as approved on Aug. 2, 2007) & Comment (as presented for discussion on July 27, 2007).

59. See proposed Code Civ. Proc. § 2029.610(a) *infra*.

60. See proposed Code Civ. Proc. § 2029.610(c) *infra*.

61. See proposed Code Civ. Proc. § 2029.610(a), (c) *infra*; Gov’t Code §§ 70611, 70612.

The Commission considered the possibility of varying the amount charged depending on the nature of the out-of-state case. For example, if the out-of-state case were comparable to a limited civil case, the fee would be the same as the first appearance fee for a limited civil case; if the out-of-state case were comparable to an unlimited civil case, the fee would be the same as the first appearance fee for an unlimited civil case. The Commission rejected this approach because there might be disputes over whether an out-of-state case is comparable to a particular type of California proceeding and because it would be difficult for a court clerk to make such determinations.

1 may require at least as much effort for the court to resolve as many cases that are  
2 filed in California.<sup>62</sup>

3 A special rule would apply to a person who is not a party to the out-of-state  
4 case. If such a person were the petitioner, the fee for filing the petition would be  
5 \$40, the same as for a discovery motion in a California case.<sup>63</sup> If such a person  
6 were responding to a petition, there would be no fee for filing the response.<sup>64</sup> This  
7 would parallel the treatment of a nonparty in a California case.<sup>65</sup>

8 To ensure that all documents relating to the same out-of-state case are filed  
9 together (including the subpoena application, subpoena, and documents relating to  
10 any subsequent discovery dispute), the petition and any response to it would have  
11 to bear the caption and case number of the out-of-state case.<sup>66</sup> To ensure that all  
12 persons involved in a dispute know which California court is handling the dispute,  
13 the first page of the petition or any response would also have to include the name  
14 of the court in which the document is filed.<sup>67</sup> In addition, the proposed law would  
15 require the superior court to assign a California case number.<sup>68</sup>

16 Further, the proposed law would clarify the briefing schedule and notice  
17 requirements that apply to a petition for relief pertaining to discovery in an out-of-  
18 state case. Those matters would be governed by Code of Civil Procedure Section  
19 1005, the same as for a discovery motion in a case pending within the state.<sup>69</sup>

20 ***Subsequent Discovery Dispute in Same Case and County***

21 On occasion, more than one discovery dispute relating to a particular out-of-  
22 state case might arise in the same county. In some instances, both disputes might  
23 involve the same disputants in the same roles (petitioner or respondent). Other  
24 times, there might be little or no overlap between the first dispute and a

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62. Frequently, the only action in a California case will be the filing of pleadings and perhaps taking of some discovery, followed by settlement. Nonetheless, each party must pay a first appearance fee, even though the case consumes few judicial resources. Resolving a dispute regarding discovery for an out-of-state case may actually be more burdensome on a California court than a typical California case.

63. See proposed Code Civ. Proc. § 2029.610(a) *infra*.

64. See proposed Code Civ. Proc. § 2029.610(c) *infra*.

65. Only a party or an intervenor must pay a first appearance fee in a California case. See, e.g., Gov't Code §§ 70611, 70612.

66. See proposed Code Civ. Proc. § 2029.610(d) *infra*.

67. *Id.*

68. See proposed Code Civ. Proc. § 2029.610(b) *infra*.

69. See proposed Code Civ. Proc. § 2029.630 *infra*.

1 subsequent dispute: the disputants might be different<sup>70</sup> or their roles might be  
2 reversed.<sup>71</sup>

3 Regardless of which situation occurs, the superior court should be aware of all  
4 previous actions it has taken with regard to the out-of-state case. This is necessary  
5 to promote efficiency and fairness and to minimize inconsistent results.

6 By requiring use of the out-of-state caption and case number on all documents  
7 relating to an out-of-state case, the recommended legislation would facilitate that  
8 objective.<sup>72</sup> To further ensure that all documents relating to the same out-of-state  
9 case are filed together, the first page of any subsequent petition would have to  
10 include the same California case number that the court assigned to the first petition  
11 filed in connection with the out-of-state case.<sup>73</sup>

12 The proposed legislation would also make clear what fee applies when multiple  
13 discovery disputes relating to the same out-of-state case arise in the same county.  
14 If a disputant is a party to the out-of-state case and has not previously paid a first  
15 appearance fee, the disputant would have to pay such a fee.<sup>74</sup> If a disputant is not a  
16 party to the out-of-state case, or has previously paid a first appearance fee, the  
17 disputant would only have to pay \$40 for filing a petition and would not have to  
18 pay anything for filing a response.<sup>75</sup> To assist in determination of the appropriate  
19 fees, the first page of a subsequent petition would have to clearly indicate that it is  
20 not the first petition filed in the county pertaining to the out-of-state case.<sup>76</sup>

21 ***Subsequent Discovery Dispute in Another County***

22 At times, two or more discovery disputes relating to the same out-of-state case  
23 might arise in different counties. In that situation, the recommended legislation  
24 would require that each petition for relief be filed in the superior court of the  
25 county in which the discovery in question is being conducted.<sup>77</sup> This approach is  
26 necessary to avoid forcing a California witness to appear in a court far away from  
27 where the witness resides.

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70. For example, the first dispute might be between the plaintiff in an out-of-state case and a California deponent who refuses to produce a particular document; the second dispute might be between a defendant in the out-of-state case and a different deponent.

71. For example, a deponent might seek a protective order with regard to a particular document requested by the plaintiff in the out-of-state case; later, the plaintiff might move to compel the same deponent to answer a particular question at the deposition.

72. See proposed Code Civ. Proc. §§ 2029.300(d), 2029.350(b)(1), 2029.610(d)(1), 2029.620(e)(1) *infra*. If the caption on a petition were based on the names and roles of the disputants instead, documents relating to the same out-of-state case might be placed in different files, causing confusion or other adverse consequences.

73. See proposed Code Civ. Proc. § 2029.620(e)(3) *infra*.

74. See proposed Code Civ. Proc. § 2029.620(c), (d) *infra*.

75. *Id.*

76. See proposed Code Civ. Proc. § 2029.620(b) & Comment *infra*. See also Code Civ. Proc. § 1991.

77. See proposed Code Civ. Proc. § 2029.600(a) *infra*.

1 In appropriate circumstances, a petition could be transferred and consolidated  
2 with a petition pending in another county.<sup>78</sup> In determining whether to order a  
3 transfer, a court should consider factors such as convenience of the deponent and  
4 similarity of issues.

5 ***Deposition on Notice or Agreement***

6 Section 2029.010 expressly applies “whenever, on notice or agreement, it is  
7 required to take the oral or written deposition of a natural person in California ....”  
8 If a deposition is required on notice or agreement, the deposing party may see no  
9 need to subpoena the witness under the statute because the witness is already  
10 obligated to attend the deposition. The statute does not make clear, however,  
11 whether issuance of a California subpoena is a prerequisite to invoking the  
12 enforcement power of a California court in the event of a discovery dispute.

13 Often, if a dispute arises regarding a deposition pursuant to notice or agreement  
14 that is taken in California for an out-of-state case, the disputants will be able to  
15 seek relief in the out-of-state forum.<sup>79</sup> In some instances, however, it may be  
16 preferable for a deponent or party to the out-of-state case to seek relief in a  
17 California court. In particular, the proximity of a California court to the place of  
18 deposition may be a significant factor.<sup>80</sup>

19 When this occurs, it should be possible for the deponent or party to resort to the  
20 California court regardless of whether the deposition is being taken pursuant to a  
21 California subpoena. The opposite approach — requiring a California subpoena to  
22 enforce discovery rights and obligations relating to a deposition on notice or  
23 agreement taken in California for an out-of-state case — would entail needless  
24 paperwork, expense, and expenditure of judicial and litigant resources in the many

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78. See Code Civ. Proc. §§ 403 (transfer), 1048(a) (consolidation); see also Gov’t Code § 70618 (transfer fees).

79. A witness who can be deposed on notice generally will be a party deponent and thus will be subject to the jurisdiction of the out-of-state tribunal.

80. The importance of providing a convenient forum for resolution of any discovery dispute helps to explain why Section 2029.010 encompasses a deposition on notice or agreement. UFDA and many statutes modeled on UFDA also encompass a deposition on notice or agreement. See sources cited in note 12 *supra*.

It is a burden on the California court system to have to resolve a dispute relating to a deposition in California for purposes of an out-of-state proceeding. But Section 2029.010 reflects a policy decision that other factors outweigh that burden. In particular, the following considerations may justify the policy decision underlying the statute:

(1) As compared to the out-of-state tribunal, a California court may be more protective of policy interests that are considered important in California.

(2) By providing assistance to litigants and counsel in out-of-state proceedings, Section 2029.010 helps to promote availability of similar assistance for Californians when they take, or have their attorneys take, depositions outside California.

(3) The burden on the California court system due to this type of dispute is not likely to be substantial. Where possible, a party to an out-of-state proceeding probably will seek relief in that proceeding rather than in a California court, because the out-of-state tribunal is likely to be familiar with the case while the California court is not.



1 instances in which no discovery dispute occurs. The recommended legislation  
2 would thus make clear that if a party to an out-of-state case deposes a witness in  
3 this state by properly issued notice or by agreement, the deponent or any party  
4 may seek relief in a California court regardless of whether the deposing party  
5 obtained a subpoena from a California court.<sup>81</sup>

6 ***Review of Superior Court Decision in Discovery Dispute***

7 A further issue is how to obtain appellate review of a superior court decision  
8 resolving a dispute relating to discovery for an out-of-state case. The  
9 recommended legislation would permit a party or deponent aggrieved by a  
10 decision to seek an extraordinary writ in the appropriate court of appeal.<sup>82</sup> Review  
11 by way of writ is proper because the decision would be equivalent to a pretrial  
12 ruling on a discovery issue, not a final judgment. The court of appeal is the  
13 appropriate tribunal because the superior court proceeding would be treated like an  
14 unlimited civil case, due to the potential complexity of the issues.<sup>83</sup>

15 **Effect of the Proposed Reforms**

16 The procedure for obtaining discovery from a California resident for use in out-  
17 of-state litigation should be clear and simple, while still protecting the interests of  
18 the public generally and the deponent in particular. The reforms recommended by  
19 the Commission would help to achieve justice, prevent confusion, and make such  
20 discovery more workable for all concerned. If UIDDA is adopted in other  
21 jurisdictions as well as in California, the state will also reap the benefits of  
22 uniformity.

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81. See proposed Code Civ. Proc. § 2029.640 *infra*.

82. See proposed Code Civ. Proc. § 2029.650 *infra*. The proposed provision is modeled on Code of Civil Procedure Sections 400 (writ of mandate to review order on motion to change place of trial) and 403.080 (writ of mandate to review order on reclassification motion).

83. See discussion of “Discovery Dispute” *supra*.



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PROPOSED LEGISLATION

1 **Heading of Chapter 12 (commencing with Section 2029.010) (amended)**

2 SECTION 1. The heading of Chapter 12 (commencing with Section 2029.010)  
3 of Title 4 of Part 4 of the Code of Civil Procedure is amended to read:

4 CHAPTER 12. ~~DEPOSITION~~ DISCOVERY IN ACTION PENDING  
5 OUTSIDE CALIFORNIA

6 **Comment.** To improve clarity, the heading of Chapter 12 is amended to replace the reference  
7 to “Deposition” with a reference to “Discovery.” This change helps to emphasize that the chapter  
8 applies not only to an oral deposition, but also to other forms of discovery. For example, the  
9 chapter applies to a deposition solely for the production of business records (see Sections  
10 2020.010(a)(3), 2020.410-2020.440), yet some in some jurisdictions such a procedure might not  
11 be referred to as a “deposition.”

12 **Code Civ. Proc. § 2029.010 (repealed). Deposition in action pending outside California**

13 SEC. 2. Section 2029.010 of the Code of Civil Procedure is repealed.

14 ~~2029.010. Whenever any mandate, writ, letters rogatory, letter of request, or~~  
15 ~~commission is issued out of any court of record in any other state, territory, or~~  
16 ~~district of the United States, or in a foreign nation, or whenever, on notice or~~  
17 ~~agreement, it is required to take the oral or written deposition of a natural person~~  
18 ~~in California, the deponent may be compelled to appear and testify, and to produce~~  
19 ~~documents and things, in the same manner, and by the same process as may be~~  
20 ~~employed for the purpose of taking testimony in actions pending in California.~~

21 **Comment.** Former Section 2029.010 is superseded by enactment of the Interstate and  
22 International Depositions and Discovery Act (Sections 2029.100-2029.900).

23 **Code Civ. Proc. §§ 2029.100-2029.900 (added). Interstate and International Depositions and**  
24 **Discovery Act**

25 SEC. 3. Article 1 (commencing with Section 2029.100) is added to Chapter 12  
26 of Title 4 of Part 4 of the Code of Civil Procedure, to read:

27 Article 1. Interstate and International Depositions and Discovery Act

28 **§ 2029.100. Short title [UIDDA § 1]**

29 2029.100. This article may be cited as the Interstate and International  
30 Depositions and Discovery Act.

31 **Comment.** Section 2029.100 is similar to Section 1 of the Uniform Interstate Depositions and  
32 Discovery Act (2007) (“UIDDA”). This article differs in two significant respects from UIDDA:  
33 (1) it addresses procedural details not addressed in UIDDA (see Sections 2029.300, 2029.350,  
34 2029.390, 2029.600, 2029.610, 2029.620, 2029.630, 2029.640, 2029.650), and (2) it governs  
35 discovery for purposes of an action pending in a foreign nation, not just discovery for purposes of  
36 an action pending in another jurisdiction of the United States (see Section 2029.200(a)(2)).

1 The entire article may be referred to as the “Interstate and International Depositions and  
2 Discovery Act.” The portions of the article that are drawn from the Uniform Interstate  
3 Depositions and Discovery Act may collectively be referred to as the “California version of the  
4 Uniform Interstate Depositions and Discovery Act.” See Section 2029.700 (uniformity of  
5 application and construction).

6 **§ 2029.200. Definitions [UIDDA § 2]**

7 2029.200. In this article:

8 (a) “Foreign jurisdiction” means either of the following:

9 (1) A state other than this state.

10 (2) A foreign nation.

11 (b) “Foreign subpoena” means a subpoena issued under authority of a court of  
12 record of a foreign jurisdiction.

13 (c) “Person” means an individual, corporation, business trust, estate, trust,  
14 partnership, limited liability company, association, joint venture, public  
15 corporation, government or governmental subdivision, agency or instrumentality,  
16 or any other legal or commercial entity.

17 (d) “State” means a state of the United States, the District of Columbia, Puerto  
18 Rico, the Virgin Islands, a federally recognized Indian tribe, or any territory or  
19 insular possession subject to the jurisdiction of the United States.

20 (e) “Subpoena” means a document, however denominated, issued under  
21 authority of a court of record requiring a person to do any of the following:

22 (1) Attend and give testimony at a deposition.

23 (2) Produce and permit inspection and copying of designated books, documents,  
24 records, electronically stored information, or tangible things in the possession,  
25 custody, or control of the person.

26 (3) Permit inspection of premises under the control of the person.

27 **Comment.** Section 2029.200 is the same as Section 2 of the Uniform Interstate Depositions  
28 and Discovery Act (2007), except that (1) the definition of “foreign jurisdiction” in subdivision  
29 (a) includes a foreign nation, not just a state other than California, and (2) the term “Virgin  
30 Islands” is substituted for “United States Virgin Islands” in subdivision (d), because “Virgin  
31 Islands” is the official name for the entity in question.

32 Subdivision (c) defines “person” broadly. This is consistent with the general code-wide  
33 definition in Section 17 (“the word ‘person’ includes a corporation as well as a natural person”).  
34 For guidance on interpreting other provisions of this code referring to a “person,” see *Hassan v.*  
35 *Mercy American River Hospital*, 31 Cal. 4th 709, 715-18, 74 P.3d 726, 3 Cal. Rptr. 3d 623  
36 (2003) (whether “person” as used in particular section of Code of Civil Procedure includes  
37 corporation or non-corporate entity “is ultimately a question of legislative intent”); *Diamond*  
38 *View Limited v. Herz*, 180 Cal. App. 3d 612, 616-19, 225 Cal. Rptr. 651 (1986) (“[T]he  
39 preliminary definition contained in section 17 is superseded when it obviously conflicts with the  
40 Legislature’s subsequent use of the term in a different statute.”); *Oil Workers Int’l Union v.*  
41 *Superior Court*, 103 Cal. App. 2d 512, 570-71, 230 P.2d 71 (1951) (unincorporated association is  
42 “person” for purpose of statutes in Code of Civil Procedure governing contempt).

43 To facilitate discovery under this article, subdivision (e) defines “subpoena” broadly. The term  
44 includes not only a document denominated a “subpoena,” but also a mandate, writ, letters  
45 rogatory, letter of request, commission, or other court document that requires a person to testify at  
46 a deposition, produce documents or other items, or permit inspection of property.

**Background from Uniform Act**

The term “Subpoena” includes a subpoena duces tecum. The description of a subpoena in the Act is based on the language of Rule 45 of the Federal Rules of Civil Procedure.

The term “Subpoena” does not include a subpoena for the inspection of a person (subdivision (e)(3) is limited to inspection of premises). Medical examinations in a personal injury case, for example, are separately controlled by state discovery rules (the corresponding federal rule is Rule 35 of the Federal Rules of Civil Procedure). Since the plaintiff is already subject to the jurisdiction of the trial state, a subpoena is never necessary.

The term “Court of Record” was chosen to exclude non-court of record proceedings from the ambit of the Act. Extending the Act to such proceedings as arbitrations would be a significant expansion that might generate resistance to the Act. A “Court of Record” includes anyone who is authorized to issue a subpoena under the laws of that state, which usually includes an attorney of record for a party in the proceeding.

[Adapted from UIDDA § 2 comment & § 3 comment (as presented for discussion on July 27, 2007).]

**§ 2029.300. Issuance of subpoena by clerk of court [UIDDA § 3]**

2029.300. (a) A party may submit the original or a true and correct copy of a foreign subpoena to the clerk of the superior court in the county in which discovery is sought to be conducted in this state. The request for and issuance of a subpoena in this state under this section shall not constitute making an appearance in the courts of this state.

(b) In addition to submitting a foreign subpoena under subdivision (a), a party seeking discovery shall do both of the following:

(1) Submit an application requesting that the superior court issue a subpoena with the same terms as the foreign subpoena. The application shall be on a form prescribed by the Judicial Council pursuant to Section 2029.390. No civil case cover sheet is required.

(2) Pay the fee specified in Section 70626 of the Government Code.

(c) When a party submits a foreign subpoena to the clerk of the superior court in accordance with subdivision (a), and satisfies the requirements of subdivision (b), the clerk shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed. The subpoena shall incorporate the terms used in the foreign subpoena.

(d) A subpoena issued under this section shall satisfy all of the following conditions:

(1) It shall bear the caption and case number of the out-of-state case to which it relates.

(2) It shall state the name of the court that issues it.

(3) It shall contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(4) It shall be on a form prescribed by the Judicial Council pursuant to Section 2029.390.

**Comment.** Section 2029.300 is added to clarify the procedure for obtaining a California subpoena to obtain discovery from a witness in this state for use in a proceeding pending in

1 another United States jurisdiction. For the benefit of the party seeking the subpoena and the court  
2 issuing it, the procedure is designed to be simple and expeditious.

3 Subdivisions (a), (c), and (d)(3) are similar to Section 3 of the Uniform Interstate Depositions  
4 and Discovery Act (2007). Subdivisions (b), (d)(1)-(2), and (d)(4) address additional procedural  
5 details.

6 Subdivision (a) makes clear that requesting and obtaining a subpoena under this section does  
7 not constitute making an appearance in the California courts. For further guidance on avoiding  
8 unauthorized practice of law, see Bus. & Prof. Code § 6125; Cal. R. Ct. 966, 983; Report of the  
9 California Supreme Court Multijurisdictional Practice Implementation Committee: Final Report  
10 and Proposed Rules (March 10, 2004); California Supreme Court Advisory Task Force on  
11 Multijurisdictional Practice, Final Report and Recommendations (Jan. 7, 2002). In general, a  
12 party to out-of-state litigation may take a deposition in California without retaining local counsel  
13 if the party is self-represented or represented by an attorney duly admitted to practice in another  
14 jurisdiction of the United States. *Birbrower v. Superior Court*, 17 Cal. 4th 119, 127, 70 Cal. Rptr.  
15 2d 304, 949 P.2d 1 (1998) (“[P]ersons may represent themselves and their own interests  
16 regardless of State Bar membership....”); Cal. R. Ct. 966; Final Report and Recommendations,  
17 *supra*, at 24. Different considerations may apply, however, if a discovery dispute arises in  
18 connection with such a deposition and a party to out-of-state litigation wants to appear in a  
19 California court with respect to the dispute.

20 See also Sections 2029.350 (issuance of subpoena by local counsel), 2029.640 (deposition on  
21 notice or agreement).

#### 22 **Background from Uniform Act**

23 The term “Submitted” to a clerk of court includes delivering to or filing. Presenting a subpoena  
24 to the clerk of court in the discovery state, so that a subpoena is then issued in the name of the  
25 discovery state, is the necessary act that invokes the jurisdiction of the discovery state, which in  
26 turn makes the newly issued subpoena both enforceable and challengeable in the discovery state.

27 The committee envisions the standard procedure under this section will become as follows,  
28 using as an example a case filed in Kansas (the trial state) where the witness to be deposed lives  
29 in California (the discovery state): A lawyer of record for a party in the action pending in Kansas  
30 will issue a subpoena in Kansas (the same way lawyers in Kansas routinely issue subpoenas in  
31 pending actions). That lawyer will then check with the clerk’s office, in the California county in  
32 which the witness to be deposed lives, to obtain a copy of its subpoena form (the clerk’s office  
33 will usually have a Web page explaining its forms and procedures). The lawyer will then prepare  
34 a California subpoena so that it has the same terms as the Kansas subpoena. The lawyer will then  
35 hire a process server (or local counsel) in California, who will take the completed and executed  
36 Kansas subpoena and the completed but not yet executed California subpoena to the clerk’s office  
37 in California. The clerk of court, upon being given the Kansas subpoena, will then issue the  
38 identical California subpoena. The process server (or other agent of the party) will pay any  
39 necessary filing fees, and then serve the California subpoena on the deponent in accordance with  
40 California law (which includes any applicable local rules).

41 The advantages of this process are readily apparent. The act of the clerk of court is ministerial,  
42 yet is sufficient to invoke the jurisdiction of the discovery state over the deponent. The only  
43 documents that need to be presented to the clerk of court in the discovery state are the subpoena  
44 issued in the trial state and the draft subpoena of the discovery state. [Note: In California, an  
45 application form would also be required.] There is no need to hire local counsel to have the  
46 subpoena issued in the discovery state, and there is no need to present the matter to a judge in the  
47 discovery state before the subpoena can be issued. In effect, the clerk of court in the discovery  
48 state simply reissues the subpoena of the trial state, and the new subpoena is then served on the  
49 deponent in accordance with the laws of the discovery state. The process is simple and efficient,  
50 costs are kept to a minimum, and local counsel and judicial participation are unnecessary to have  
51 the subpoena issued and served in the discovery state.

52 The Act will not change or repeal the law in those states that still require a commission or  
53 letters rogatory to take a deposition in a foreign jurisdiction. The Act does, however, repeal the



1 law in those discovery states that still require a commission or letter rogatory from a trial state  
2 before a deposition can be taken in those states. It is the hope of the Conference that this Act will  
3 encourage states that still require the use of commissions or letters rogatory to repeal those laws.

4 The Act requires that, when the subpoena is served, it contain or be accompanied by the names,  
5 addresses, and telephone numbers of all counsel of record and of any party not represented by  
6 counsel. The committee believes that this requirement imposes no significant burden on the  
7 lawyer issuing the subpoena, given that the lawyer already has the obligation to send a notice of  
8 deposition to every counsel of record and any unrepresented parties. The benefits in the discovery  
9 state, by contrast, are significant. This requirement makes it easy for the deponent (or, as will  
10 frequently be the case, the deponent's lawyer) to learn the names of and contact the other lawyers  
11 in the case. This requirement can easily be met, since the subpoena will contain or be  
12 accompanied by the names, addresses, and telephone numbers of all counsel of record and of any  
13 party not represented by counsel (which is the same information that will ordinarily be contained  
14 on a notice of deposition and proof of service).

15 [Adapted from UIDDA § 3 comment (as presented for discussion on July 27, 2007).]

16 **§ 2029.350. Issuance of subpoena by local counsel**

17 2029.350. (a) Notwithstanding Sections 1986 and 2029.300, if a party to a  
18 proceeding pending in a foreign jurisdiction retains an attorney licensed to practice  
19 in this state, who is an active member of the State Bar, and that attorney receives  
20 the original or a true and correct copy of a subpoena issued by a court of record of  
21 a foreign jurisdiction, the attorney may issue a subpoena under this article,  
22 incorporating the terms used in the foreign subpoena.

23 (b) A subpoena issued under this section shall satisfy all of the following  
24 conditions:

25 (1) It shall bear the caption and case number of the out-of-state case to which it  
26 relates.

27 (2) It shall state the name of the superior court of the county in which the  
28 discovery is to be conducted.

29 (3) It shall contain or be accompanied by the names, addresses, and telephone  
30 numbers of all counsel of record in the proceeding to which the subpoena relates  
31 and of any party not represented by counsel.

32 (4) It shall be on a form prescribed by the Judicial Council pursuant to Section  
33 2029.390.

34 **Comment.** Section 2029.350 is added to make clear that if certain conditions are satisfied,  
35 local counsel may issue process compelling a California witness to appear at a deposition for an  
36 action pending in another jurisdiction.

37 The section does not make retention of local counsel mandatory. For guidance on that point,  
38 see Section 2029.300(a); Bus. & Prof. Code § 6125; Cal. R. Ct. 966, 983; Report of the California  
39 Supreme Court Multijurisdictional Practice Implementation Committee: Final Report and  
40 Proposed Rules (March 10, 2004); California Supreme Court Advisory Task Force on  
41 Multijurisdictional Practice, Final Report and Recommendations (Jan. 7, 2002). In general, a  
42 party to out-of-state litigation may take a deposition in California without retaining local counsel  
43 if the party is self-represented or represented by an attorney duly admitted to practice in another  
44 jurisdiction of the United States. *Birbrower v. Superior Court*, 17 Cal. 4th 119, 127, 70 Cal. Rptr.  
45 2d 304, 949 P.2d 1 (1998) (“[P]ersons may represent themselves and their own interests  
46 regardless of State Bar membership....”); Cal. R. Ct. 966; Final Report and Recommendations,  
47 *supra*, at 24. Different considerations may apply, however, if a discovery dispute arises in

1 connection with such a deposition and a party to out-of-state litigation wants to appear in a  
2 California court with respect to the dispute.

3 See also Sections 2029.300 (issuance of subpoena by clerk of court), 2029.640 (deposition on  
4 notice or agreement).

5 **§ 2029.390. Judicial Council forms**

6 2029.390. On or before January 1, 2010, the Judicial Council shall do all of the  
7 following:

8 (a) Prepare an application form to be used for purposes of Section 2029.300.

9 (b) Prepare one or more new subpoena forms that include clear instructions for  
10 use in issuance of a subpoena under Section 2029.300 or 2029.350. Alternatively,  
11 the Judicial Council may modify one or more existing subpoena forms to include  
12 clear instructions for use in issuance of a subpoena under Section 2029.300 or  
13 2029.350.

14 **Comment.** Section 2029.390 is new. The Judicial Council is to prepare forms to facilitate  
15 compliance with this article.

16 **Note.** Section 2029.390 would set a deadline of January 1, 2010, for the Judicial Council to  
17 prepare the required forms. This deadline is premised on enactment of the proposed legislation in  
18 2008, with an effective date of January 1, 2009, and a delayed operative date of January 1, 2010  
19 (except for this section). That would give the Judicial Council one year to prepare the forms  
20 before the legislation becomes operative. The deadline will have to be adjusted if the proposed  
21 legislation is not introduced in the Legislature until 2009 or later.

22 **§ 2029.400. Service of subpoena [UIDDA § 4]**

23 2029.400. A subpoena issued under this article shall be personally served in  
24 compliance with the law of this state, including, without limitation, Section 1985.

25 **Comment.** Section 2029.400 is similar to Section 4 of the Uniform Interstate Depositions and  
26 Discovery Act (2007). Section 2029.400 applies not only to a subpoena issued by a clerk of court  
27 under Section 2029.300, but also to a subpoena issued by local counsel under Section 2029.350.

28 **§ 2029.500. Deposition, production, and inspection [UIDDA § 5]**

29 2029.500. When a subpoena issued under this article commands a person to  
30 attend and give testimony at a deposition, produce designated books, documents,  
31 records, electronically stored information, or tangible things, or permit inspection  
32 of premises, or discovery is taken in the state pursuant to properly issued notice or  
33 by agreement, the time and place and the manner of the taking of the deposition,  
34 the production, or the inspection shall comply with the law of this state, including,  
35 without limitation, Title 4 (commencing with Section 2016.010) of Part 4.

36 **Comment.** Section 2029.500 is similar to Section 5 of the Uniform Interstate Depositions and  
37 Discovery Act (2007). Section 2029.500 applies not only to a subpoena issued by a clerk of court  
38 under Section 2029.300, but also to a subpoena issued by local counsel under Section 2029.350  
39 and to discovery taken in this state pursuant to properly issued notice or by agreement.

40 **Background from Uniform Act**

41 The Act requires that the discovery permitted by this section must comply with the laws of the  
42 discovery state. The discovery state has a significant interest in these cases in protecting its  
43 residents who become non-party witnesses in an action pending in a foreign jurisdiction from any

1 unreasonable or unduly burdensome discovery request. Therefore, the committee believes that the  
2 discovery procedure must be the same as it would be if the case had originally been filed in the  
3 discovery state.

4 [Adapted from UIDDA § 5 comment (as presented for discussion on July 27, 2007).]

5 **§ 2029.600. Discovery dispute [UIDDA § 6]**

6 2029.600. (a) If a dispute arises relating to discovery under this article, and the  
7 dispute involves a person located in this state, any request for a protective order or  
8 to enforce, quash, or modify a subpoena, or for other relief shall comply with the  
9 applicable rules or statutes of this state and be filed in the superior court in the  
10 county in which discovery is to be conducted. If the dispute does not involve a  
11 person located in this state, relief may be sought either in the foreign jurisdiction  
12 or in the superior court in the county in which discovery is to be conducted.

13 (b) A request for relief pursuant to this section shall be referred to as a petition  
14 notwithstanding any statute under which a request for the same relief would be  
15 referred to as a motion or by another term if it was brought in a proceeding  
16 pending in this state.

17 **Comment.** Section 2029.600 is similar to Section 6 of the Uniform Interstate Depositions and  
18 Discovery Act (2007). It serves to clarify the procedure for using a California court to resolve a  
19 dispute relating to discovery conducted in this state for purposes of a proceeding pending in  
20 another jurisdiction.

21 A request for relief pursuant to this section is properly denominated a “petition,” not a  
22 “motion.” For example, suppose a party to an out-of-state proceeding subpoenas personal records  
23 of a nonparty consumer under Section 1985.3 and the nonparty consumer serves a written  
24 objection to production as authorized by the statute. To obtain production, the subpoenaing party  
25 would have to file a “petition” to enforce the subpoena, not a “motion” as Section 1985.3(g)  
26 prescribes for a case pending in California.

27 See also Sections 2029.610 (fees and format of papers relating to discovery dispute), 2029.620  
28 (subsequent discovery dispute in same case and county), 2029.630 (hearing date and briefing  
29 schedule), 2029.640 (deposition on notice or agreement), 2029.650 (writ petition).

30 **Note.** The objective of proposed Section 2029.600 is to ensure that if a dispute arises relating  
31 to discovery under this article, California is able to protect its policy interests and the interests of  
32 persons located in the state. The Commission is particularly interested in comments on whether  
33 the language used in proposed Section 2029.600 would accomplish this objective. Could the  
34 language be improved to better accomplish this objective? If so, how should the provision be  
35 rephrased?

36 **§ 2029.610. Fees and format of papers relating to discovery dispute**

37 2029.610. (a) On filing a petition under Section 2029.600, a petitioner who is a  
38 party to the out-of-state proceeding shall pay a first appearance fee as specified in  
39 Section 70611 of the Government Code. A petitioner who is not a party to the out-  
40 of-state proceeding shall pay a motion fee as specified in subdivision (a) of  
41 Section 70617 of the Government Code.

42 (b) The court in which the petition is filed shall assign it a case number.

43 (c) On responding to a petition under Section 2029.600, a party to the out-of-  
44 state proceeding shall pay a first appearance fee as specified in Section 70612 of

1 the Government Code. A person who is not a party to the out-of-state proceeding  
2 may file a response without paying a fee.

3 (d) Any petition, response, or other document filed under this section shall  
4 satisfy all of the following conditions:

5 (1) It shall bear the caption and case number of the out-of-state case to which it  
6 relates.

7 (2) The first page shall state the name of the court in which the document is  
8 filed.

9 (3) The first page shall state the case number assigned by the court under  
10 subdivision (b).

11 **Comment.** Section 2029.610 is added to clarify procedural details for resolution of a dispute  
12 relating to discovery under this article.

13 See also Sections 2029.600 (discovery dispute), 2029.620 (subsequent discovery dispute in  
14 same case and county), 2029.630 (hearing date and briefing schedule), 2029.640 (deposition on  
15 notice and agreement), 2029.650 (writ petition).

16 **§ 2029.620. Subsequent discovery dispute in same case and county**

17 2029.620. (a) If a petition has been filed under Section 2029.600 and another  
18 dispute later arises relating to discovery being conducted in the same county for  
19 purposes of the same out-of-state proceeding, the deponent or other disputant may  
20 file a petition for appropriate relief in the same superior court as the previous  
21 petition.

22 (b) The first page of the petition shall clearly indicate that it is not the first  
23 petition filed in that court that relates to the out-of-state case.

24 (c) If the petitioner in the new dispute is not a party to the out-of-state case, or is  
25 a party who previously paid a first appearance fee under this article, the petitioner  
26 shall pay a motion fee as specified in subdivision (a) of Section 70617 of the  
27 Government Code. If the petitioner in the new dispute is a party to the out-of-state  
28 case but has not previously paid a first appearance fee under this article, the  
29 petitioner shall pay a first appearance fee as specified in Section 70611 of the  
30 Government Code.

31 (d) If a person responding to the new petition is not a party to the out-of-state  
32 case, or is a party who previously paid a first appearance fee under this article, that  
33 person does not have to pay a fee for responding. If a person responding to the  
34 new petition is a party to the out-of-state case but has not previously paid a first  
35 appearance fee under this article, that person shall pay a first appearance fee as  
36 specified in Section 70612 of the Government Code.

37 (e) Any petition, response, or other document filed under this section shall  
38 satisfy all of the following conditions:

39 (1) It shall bear the caption and case number of the out-of-state case to which it  
40 relates.

41 (2) The first page shall state the name of the court in which the document is  
42 filed.

1 (3) The first page shall state the same case number that the court assigned to the  
2 first petition relating to the out-of-state case.

3 **Comment.** Section 2029.620 is added to clarify the procedure that applies when two or more  
4 discovery disputes relating to the same out-of-state proceeding arise in the same county. To  
5 promote efficiency and fairness and minimize inconsistent results, all documents relating to the  
6 same out-of-state case are to be filed together, bearing the same California case number.

7 In addition, subdivision (b) requires the first page of a subsequent petition to clearly indicate  
8 that it is not the first petition filed in the court relating to the out-of-state case. If the petitioner  
9 does not know the history of the case, the petitioner has a duty to determine whether a previous  
10 petition has been filed. That duty should not be difficult to satisfy, because the petitioner has an  
11 obligation to meet and confer with the other disputant before seeking relief in court.

12 Section 2029.620 does not apply when discovery disputes relate to the same out-of-state case  
13 but arise in different counties. In that situation, each petition for relief must be filed in the  
14 superior court of the county in which the deposition is being taken. See Sections 2029.600,  
15 2029.600(a). In appropriate circumstances, a petition may be transferred and consolidated with a  
16 petition pending in another county. See Sections 403 (transfer), 1048(a) (consolidation); see also  
17 Gov't Code § 70618 (transfer fees). In determining whether to order a transfer, a court should  
18 consider factors such as convenience of the deponent and similarity of issues.

19 See also Sections 2029.600 (discovery dispute), 2029.610 (fees and format of papers relating to  
20 discovery dispute), 2029.630 (hearing date and briefing schedule), 2029.640 (deposition on notice  
21 and agreement), 2029.650 (writ petition).

22 **§ 2029.630. Hearing date and briefing schedule**

23 2029.630. A petition under Section 2029.600 or Section 2029.620 is subject to  
24 the requirements of Section 1005 relating to notice and to filing and service of  
25 papers.

26 **Comment.** Section 2029.630 is added to clarify the proper hearing date and briefing schedule  
27 for a petition under Section 2029.600 or 2029.620. The petition is to be treated in the same  
28 manner as a discovery motion in a case pending within the state.

29 **§ 2029.640. Discovery on notice or agreement**

30 2029.640. If a party to a proceeding pending in a foreign jurisdiction seeks  
31 discovery from a witness in this state by properly issued notice or by agreement, it  
32 is not necessary for that party to obtain a subpoena under this article to be able to  
33 seek relief under Section 2029.600 or 2029.620. The deponent or any other party  
34 may also seek relief under Section 2029.600 or 2029.620 in those circumstances,  
35 regardless of whether the deponent was subpoenaed under this article.

36 **Comment.** Section 2029.640 is added to clarify how this article applies when a party to a  
37 proceeding pending in another jurisdiction seeks discovery from a witness in this state by  
38 properly issued notice or by agreement. See also Section 2029.500 (deposition, production, and  
39 inspection).

40 **§ 2029.650. Writ petition**

41 2029.650. (a) If a superior court issues an order granting, denying, or otherwise  
42 resolving a petition under Section 2029.600 or 2029.620, a person aggrieved by  
43 the order may petition the appropriate court of appeal for an extraordinary writ.

1 (b) Immediately after filing a writ petition in a court of appeal under this section,  
2 the petitioner shall file a copy of it in the superior court that issued the challenged  
3 order.

4 (c) Pending its decision on the writ petition, the court of appeal may stay the  
5 order of the superior court, the discovery that is the subject of that order, or both.

6 (d) Immediately after the court of appeal decides the writ petition and its order  
7 on the petition becomes final, the clerk of the court of appeal shall file a copy of  
8 the final order with the clerk of the superior court.

9 **Comment.** Section 2029.650 is added to clarify the procedure for reviewing a decision of a  
10 superior court on a dispute arising in connection with discovery under this article. The provision  
11 is modeled on Sections 400 (writ of mandate to review order on motion to change place of trial)  
12 and 403.080 (writ of mandate to review order on reclassification motion).

13 **§ 2029.700. Uniformity of application and construction [UIDDA § 7]**

14 2029.700. (a) Sections 2029.100, 2029.200, 2029.300, 2029.400, 2029.500,  
15 2029.600, 2029.800, 2029.900, and this section, collectively, constitute and may  
16 be referred to as the “California version of the Uniform Interstate Depositions and  
17 Discovery Act.”

18 (b) In applying and construing this uniform act, consideration shall be given to  
19 the need to promote uniformity of the law with respect to its subject matter among  
20 the states that enact it.

21 **Comment.** Subdivision (a) of Section 2029.700 provides a convenient means of referring to  
22 the sections within this article that are drawn from the Uniform Interstate Depositions and  
23 Discovery Act (2007). The entire article may be referred to as the “Interstate and International  
24 Depositions and Discovery Act.” See Section 2029.100 & Comment.

25 Subdivision (b) is similar to Section 7 of the Uniform Interstate Depositions and Discovery  
26 Act.

27 **§ 2029.800. Application to pending action [UIDDA § 8]**

28 2029.800. This article applies to requests for discovery in cases pending on or  
29 after the operative date of this section.

30 **Comment.** Section 2029.800 is the same as Section 8 of the Uniform Interstate Depositions  
31 and Discovery Act (2007), except “or after” is inserted to improve clarity and “operative date” is  
32 substituted for “effective date.”

33 In California, “effective date” refers to the date on which a statute is recognized as constituting  
34 California law. In contrast, “operative date” refers to the date on which the statute actually  
35 becomes operative. See, e.g., *People v. Palomar*, 171 Cal. App. 3d 131, 134 (1985) (“The  
36 ‘enactment is a law on its effective date only in the sense that it cannot be changed except by  
37 legislative process; the rights of individuals under its provisions are not substantially affected  
38 until the provision operates as law.’”).

39 The effective date of this article is January 1 of the year following its enactment. See Cal.  
40 Const. art. IV, § 8(c)(1); Gov’t Code § 9600(a). Usually, the operative date of a statute is the  
41 same as the effective date. *People v. Henderson*, 107 Cal. App. 3d 475, 488 (1980). In some  
42 instances, a statute may specify a different operative date. *Cline v. Lewis*, 175 Cal. 315, 318;  
43 *Johnston v. Alexis*, 153 Cal. App. 3d 33, 40 (1984). Here, the operative date for this article  
44 (except for Section 2029.390) is delayed to allow time for the Judicial Council to prepare forms  
45 pursuant to Section 2029.390. See Section 2029.900.

1 **§ 2029.900. Operative date [UIDDA § 9]**

2 2029.900. Section 2029.390 is operative on January 1, 2009. The remainder of  
3 this article is operative on January 1, 2010.

4 **Comment.** Section 2029.900 is similar to Section 9 of the Uniform Interstate Depositions and  
5 Discovery Act (2007), except that “operative date” is substituted for “effective date” and the  
6 operative date for the article (except for Section 2029.390) is delayed to allow time for the  
7 Judicial Council to prepare forms pursuant to Section 2029.390. For an explanation of the  
8 distinction between “effective date” and “operative date” in California, see Section 2029.800  
9 Comment.

10 **Note.** The operative date of January 1, 2010, is premised on enactment of the proposed  
11 legislation in 2008 and preparation of Judicial Council forms pursuant to Section 2029.390 by  
12 January 1, 2010. The operative date will need to be adjusted if the proposed legislation is not  
13 introduced in the Legislature until 2009 or later.

14 **Gov’t Code § 70626 (amended). Miscellaneous filing fees**

15 SEC. 4. Section 70626 of the Government Code is amended to read:

16 70626. (a) The fee for each of the following services is fifteen dollars (\$15).  
17 Amounts collected shall be distributed to the Trial Court Trust Fund under Section  
18 68085.1.

19 (1) Issuing a writ of attachment, a writ of mandate, a writ of execution, a writ of  
20 sale, a writ of possession, a writ of prohibition, or any other writ for the  
21 enforcement of any order or judgment.

22 (2) Issuing an abstract of judgment.

23 (3) Issuing a certificate of satisfaction of judgment under Section 724.100 of the  
24 Code of Civil Procedure.

25 (4) Certifying a copy of any paper, record, or proceeding on file in the office of  
26 the clerk of any court.

27 (5) Taking an affidavit, except in criminal cases or adoption proceedings.

28 (6) Acknowledgment of any deed or other instrument, including the certificate.

29 (7) Recording or registering any license or certificate, or issuing any certificate  
30 in connection with a license, required by law, for which a charge is not otherwise  
31 prescribed.

32 (8) Issuing any certificate for which the fee is not otherwise fixed.

33 (b) The fee for each of the following services is twenty dollars (\$20). Amounts  
34 collected shall be distributed to the Trial Court Trust Fund under Section 68085.1.

35 (1) Issuing an order of sale.

36 (2) Receiving and filing an abstract of judgment rendered by a judge of another  
37 court and subsequent services based on it, unless the abstract of judgment is filed  
38 under Section 704.750 or 708.160 of the Code of Civil Procedure.

39 (3) Filing a confession of judgment under Section 1134 of the Code of Civil  
40 Procedure.

41 (4) Filing an application for renewal of judgment under Section 683.150 of the  
42 Code of Civil Procedure.

1 (5) Issuing a commission to take a deposition in another state or place under  
2 Section 2026.010 of the Code of Civil Procedure, or issuing a subpoena under  
3 Section 2029.300 to take a deposition in this state for purposes of a proceeding  
4 pending in another jurisdiction.

5 (6) Filing and entering an award under the Workers' Compensation Law  
6 (Division 4 (commencing with Section 3200) of the Labor Code).

7 (7) Filing an affidavit of publication of notice of dissolution of partnership.

8 (8) Filing an appeal of a determination whether a dog is potentially dangerous or  
9 vicious under Section 31622 of the Food and Agricultural Code.

10 (9) Filing an affidavit under Section 13200 of the Probate Code, together with  
11 the issuance of one certified copy of the affidavit under Section 13202 of the  
12 Probate Code.

13 (10) Filing and indexing all papers for which a charge is not elsewhere provided,  
14 other than papers filed in actions or special proceedings, official bonds, or  
15 certificates of appointment.

16 **Comment.** Subdivision (b) of Section 70626 is amended to specify the fee for obtaining a  
17 subpoena from a California court to take a deposition in this state for purposes of a proceeding  
18 pending in another jurisdiction. If a person seeks multiple subpoenas, a separate fee is payable  
19 under this subdivision for each subpoena sought.

20 **Background from Uniform Act**

21 The committee believes that the fee, if any, for issuing a subpoena should be sufficient to cover  
22 only the actual transaction costs, or should be the same as the fee for local deposition subpoenas.

23 [Adapted from UIDDA § 5 comment (as presented for discussion on July 27, 2007).]

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