

Memorandum 2007-35

**Civil Discovery: Deposition in Out-of-State Litigation
(Draft of Revised Tentative Recommendation)**

In its study of civil discovery, the Commission received comments expressing concern about the procedure for taking discovery in California for purposes of out-of-state litigation. The Commission began to investigate that topic in mid-2005. Soon afterwards, the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) began drafting a uniform law on the topic. The Commission originally planned to introduce legislation on the topic in 2007, but delayed completion of its study due to the ongoing NCCUSL study. Earlier this month, NCCUSL approved a uniform act (the “Uniform Interstate Depositions and Discovery Act” or “UIDDA”), which is attached as Exhibit pages 18-21. The staff has since prepared a draft of a revised tentative recommendation, which combines the uniform act with the Commission’s own proposal along the lines previously directed by the Commission (hereafter “Attached Draft”). This draft is attached for the Commission and interested persons to review. Also attached is an email message recently received from Tony Klein of Process Server Institute, describing his recent experiences with regard to discovery in California for a case pending in Texas (Exhibit pp. 1-17).

The Commission should consider whether to approve the attached draft, with or without revisions, as a revised tentative recommendation to be circulated for comment. If the Commission approves a revised tentative recommendation at its August meeting, there would still be time to consider the comments and finalize a proposal for introduction in the Legislature in 2008.

A few matters relating to the attached draft are discussed below.

NEED FOR REFORM

In his letter, Tony Klein describes a Texas case in which discovery was taken in several different California counties. In San Mateo County Superior Court, a

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

clerk issued a subpoena simply upon presentation of documentation from the Texas court. No fee was required. Exhibit p.2. The same thing happened in San Diego County Superior Court. *Id.*

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. Exhibit pp. 1-2.

This disparity in treatment from county to county underscores the need for reform. Existing law — Code of Civil Procedure Section 2029.010 — provides inadequate guidance regarding the procedure for obtaining a subpoena to conduct discovery for out-of-state litigation.

NCCUSL STUDY

The draft of UIDDA presented for discussion at NCCUSL's annual meeting was quite similar to the draft that this Commission considered last December. Because NCCUSL's annual meeting was held in Pasadena, the staff was able to attend some of the discussion relating to UIDDA and to meet with the Chair and Reporter of the drafting committee to learn about the Act. We are grateful for this opportunity.

A number of minor changes were made to the draft of the uniform act before it was approved by a vote of the states. Some of those changes are discussed below; others do not seem significant enough to warrant discussion here.

Although NCCUSL approved a uniform act, the text of the act is still subject to review by NCCUSL's style committee. In addition, the comments to the uniform act have not yet been revised to reflect the changes made at the annual meeting. The final version of the act and comments should be available later this year. In preparing the attached draft of a tentative recommendation, we have used the version of the act that was approved at the annual meeting (Exhibit pp. 18-21), and the version of the comments that was presented for discussion at the annual meeting.

SCOPE OF PROPOSED LEGISLATION

UIDDA applies only to discovery conducted for litigation pending in another “State.” In the draft presented for discussion at NCCUSL’s annual meeting, “State” was defined as “a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.” At the annual meeting, however, two changes to this definition were suggested.

Federally Recognized Indian Tribe

First, it was suggested that the definition be expanded to include a federally recognized Indian tribe. This was considered important because many states include Indian reservations. Litigation pending in an Indian reservation may require discovery from a witness located outside the reservation; litigation pending outside an Indian reservation may require discovery from a witness located within the reservation. NCCUSL adopted the suggestion to broaden the definition of “State” to include a federally recognized Indian tribe. See UIDDA § 2(4) (Exhibit p. 19).

The staff has incorporated this change in the attached draft of a revised tentative recommendation. See Attached Draft p. 20 (proposed Code Civ. Proc. § 2029.200(d)). The change has no real impact on the Commission’s proposal, because the Commission had previously decided to apply the proposed law not only to discovery for a case pending in another United States jurisdiction, but also to discovery for a case pending in a foreign nation. See Attached Draft p. 20 (proposed Code Civ. Proc. § 2029.200(a)(2) & Comment); see also Attached Draft p. 7, n.34. The Commission’s proposal is broader than the uniform act in this respect, but it is consistent with the scope of existing California law. See Code Civ. Proc. § 2029.010.

Virgin Islands

Second, it was suggested that the definition be revised to replace “United States Virgin Islands” with “Virgin Islands,” because “Virgin Islands” is the official name for the entity in question. Due to stylistic conventions of the organization, NCCUSL did not adopt that suggestion.

This Commission is not bound by those stylistic conventions, however, so we have used the official name “Virgin Islands” in the attached draft of a revised

tentative recommendation. See Attached Draft p. 20 (proposed Code Civ. Proc. § 2029.200(d)).

PROCEDURE FOR REQUESTING A SUBPOENA

Earlier in this study, the Commission decided to establish a simple procedure for a party to obtain a subpoena from a California court compelling discovery for an out-of-state case. The party would have to: (1) submit the original or a true and correct copy of a document from the out-of-state jurisdiction requiring such discovery, (2) pay a fee of \$20 per subpoena, which is comparable to the fee for issuing a commission to take an out-of-state deposition, and (3) submit an application on a form to be prescribed by the Judicial Council. The attached draft of a revised tentative recommendation takes that approach. See Attached Draft pp. 6-8, 21-23 (proposed Code Civ. Proc. § 2029.300). A number of new issues have arisen relating to this procedure.

Civil Case Cover Sheet

In oral communications with the staff, Tony Klein suggested that the proposed legislation should make clear that completion of a civil case cover sheet is not necessary. He believes that some of the problems he encountered in obtaining a subpoena from San Francisco County Superior Court for the Texas case were due to concerns over a civil case cover sheet, which calls for a signature by a member of the California Bar or self-represented party.

Mr. Klein's suggestion could be implemented by revising proposed Code of Civil Procedure Section 2029.300 as shown in underscore below:

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.

....

The staff believes this is a good idea.

Request for Multiple Subpoenas

John Perez of the National Association of Professional Process Servers attended the portions of the NCCUSL annual meeting relating to UIDDA. In oral communications with the staff, he suggested that if multiple California subpoenas are needed for out-of-state litigation, it should be possible to obtain all of the subpoenas from a single California court, even if the witnesses are located in different counties.

That would not be possible under the attached draft of a revised tentative recommendation. See Attached Draft p. 21 (proposed Code Civ. Proc. § 2029.300(a), which requires submission of materials to “the clerk of the superior court in the county in which discovery is sought to be conducted in this state”).

The Commission previously considered the point Mr. Perez raises. See First Supplement to CLRC Memorandum 2006-7, pp. 5-6. From the standpoint of the party seeking the subpoenas, it would be more efficient and less expensive to obtain all of them from one California court than to have to go to courts in several counties. From the standpoint of the California deponents, however, it is important that their subpoenas clearly indicate which court to go to in the event of a discovery dispute. Further, any discovery dispute should be resolved in the county in which the deponent resides, so that the deponent does not have to travel a long distance to get relief if needed. If a subpoena were issued by a court in a different county, the subpoena would have to include both the name of the court issuing it and the name of the court in which to seek relief in the event of a discovery dispute.

Because two different courts are involved, there is a risk that the witness will be confused about where to go to seek relief. Due to this risk, the Commission decided not to allow a California court to issue a subpoena for a deposition in another county for purposes of out-of-state litigation. CLRC Minutes (April 2006), p. 12.

Mr. Perez believes that the risk of confusion is minimal, particularly if the subpoena form is well-designed. The staff agrees that steps could be taken to minimize the risk, but is not convinced that the risk could be entirely eliminated.

We would stick with the Commission’s current approach to this issue.

Unauthorized Practice of Law

At NCCUSL's annual meeting, some NCCUSL delegates expressed concern about whether requesting an out-of-state court to issue a subpoena might be considered unauthorized practice of law. There was considerable debate over whether UIDDA should include a statement indicating that such a request does not constitute the unauthorized practice of law. The drafting committee resisted the idea. They consider it dangerous to suggest that legislators can determine what constitutes and does not constitute unauthorized practice of law, which is a judicial function, implicating separation of powers issues. In the end, NCCUSL decided to include the following statement in Section 3 of UIDDA: "The request for an issuance of a subpoena in this state under this act shall not constitute making an appearance in the courts of this state."

Should that statement also be included in the Commission's proposal?

On the one hand, there is already a well-developed body of California authority on unauthorized practice of law. See Bus. & Prof. Code § 6125; Cal. R. Ct. 966, 983; Report of the California Supreme Court Multijurisdictional Practice Implementation Committee: Final Report and Proposed Rules (March 10, 2004); California Supreme Court Advisory Task Force on Multijurisdictional Practice, Final Report and Recommendations (Jan. 7, 2002). In general, a party to out-of-state litigation may take a deposition in California without retaining local counsel if the party is self-represented or represented by an attorney duly admitted to practice in another jurisdiction of the United States. *Birbrower v. Superior Court*, 17 Cal. 4th 119, 127, 70 Cal. Rptr. 2d 304, 949 P.2d 1 (1998) ("[P]ersons may represent themselves and their own interests regardless of State Bar membership...."); Cal. R. Ct. 966; Final Report and Recommendations, *supra*, at 24. Different considerations may apply, however, if a discovery dispute arises in connection with such a deposition and a party to out-of-state litigation wants to appear in a California court with respect to the dispute.

Because guidance on unauthorized practice of law already exists in California, the Commission previously decided not to address the matter in this study, other than referring to the pertinent authorities in proposed Comments. That may still be the best approach.

On the other hand, however, if UIDDA includes the sentence in question and California decides not to include it, the omission might generate concern that California's position on unauthorized practice of law differs from UIDDA's. Careful review of the relevant authorities would demonstrate that is not the case,

but persons involved in out-of-state litigation might not have time to familiarize themselves with those authorities.

To help ascertain the best approach, the staff has included the sentence in question in the attached draft of a tentative recommendation. See Attached Draft p. 21 (proposed Code Civ. Proc. § 2029.300(a)). In addition, we have included a Note soliciting comment on whether inclusion of the sentence is a good idea. See Attached Draft pp. 21-23; see also Attached Draft pp. 9-10.

Does the Commission want to handle the matter in this manner, or would it like to handle it differently?

ISSUANCE OF A SUBPOENA

In the draft of UIDDA presented for discussion at NCCUSL's annual meeting, Section 3(b) said: "When a party presents a foreign subpoena to a clerk of court in this state, the clerk shall *immediately* issue to that party a subpoena for service upon the person to which the foreign subpoena is directed." (Emphasis added.) NCCUSL delegates voiced concern about the word "immediately." They pointed out that processing of foreign subpoenas should be done in the same time frame as local subpoenas are processed by the clerk of court. Thus, NCCUSL revised the sentence to read: "When a party submits a foreign subpoena to a clerk of court in this state, the clerk, *in accordance with local procedure*, shall *promptly* issue a subpoena for service upon the person to which the foreign subpoena is directed." (Emphasis added.)

In the attached draft of a revised tentative recommendation, proposed Section 2029.300(c) would say: "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." (Emphasis added.) We omitted the phrase "in accordance with local procedure" because we feared that the phrase might be construed as an invitation for a county to develop its own special rules governing issuance of a subpoena in this situation. An important objective of this study is to eliminate disparities in treatment from county to county.

Does the Commission agree with the approach taken in the attached draft, or would it like to track UIDDA's language more closely on this point?

DISCOVERY DISPUTE

Section 6 of UIDDA says: “An application to the court for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court under Section 3 must comply with the applicable rules or statutes of this state and be submitted to the court in the county in which discovery is to be conducted.” The corresponding Comment, as presented for discussion at NCCUSL’s annual meeting, says:

The act requires that any application to the court for a protective order, or to enforce, quash, or modify a subpoena, or for any other dispute relating to discovery under this Act, must comply with the law of the discovery state. Those laws include the discovery state’s procedural, evidentiary, and conflict of laws rules. Again, the discovery state has a significant interest in protecting its residents who become non-party witnesses in an action pending in a foreign jurisdiction from any unreasonable or unduly burdensome discovery requests, and *this is easily accomplished by requiring that any discovery motions must be decided under the laws of the discovery state*. This protects the deponent by requiring that *all applications to the court that directly affect the deponent must be made in the discovery state*.

....

Evidentiary issues that may arise, such as objections based on grounds such as relevance or privilege, *are best decided in the discovery state under the laws of the discovery state* (including its conflict of laws principles).

Nothing in this act limits any party from applying for appropriate relief in the trial state. Applications to the court that affect only the parties to the action can be made in the trial state. For example, any party can apply for an order in the trial state to bar the deposition of the out-of-state deponent on grounds of relevance, and that motion would be made and ruled on before the deposition subpoena is ever presented to the clerk of court in the discovery state.

....

(Emphasis added.)

Some of the language in the Comment appears to draw a distinction between “applications to the court that directly affect the deponent” and “[a]pplications to the court that affect only the parties to the action.” Other statements in the Comment do not seem to draw such a distinction. Similarly, there is no hint of such a distinction in the statutory text.

The Commission extensively discussed this point last December. It decided that if a dispute arises relating to discovery for out-of-state litigation, and the

dispute affects a nonparty witness, the dispute should be resolved in California, not the out-of-state tribunal. CLRC Minutes (Dec. 2006), p. 6. The Commission further decided that if the dispute only affects the parties, either forum should be permissible. *Id.* The Commission expressed concern that NCCUSL’s language did not clearly convey this point. *Id.* It preferred the language in its own proposal, but instructed the staff to “review and perhaps further refine that language to ensure that it achieves the desired result.” *Id.*

At NCCUSL’s annual meeting, the Commission’s former Executive Secretary Nathaniel Sterling raised concern about the drafting of Section 6 of UIDDA. He did not press the matter to a floor vote, however, because there did not seem to be a substantive difference between NCCUSL’s approach and that of the Commission. No change in Section 6 was made in response to his comments.

In the attached draft of a tentative recommendation, proposed Code of Civil Procedure Section 2029.600 would read:

§ 2029.600. Discovery dispute [UIDDA § 6]

2029.600. (a) *If a dispute arises relating to discovery under this article, and the deponent is involved in the dispute, any request for a protective order or to enforce, quash, or modify a subpoena, or for other relief shall comply with the applicable rules or statutes of this state and be filed in the superior court in the county in which discovery is to be conducted. If the deponent is not involved in the dispute, relief may be sought either in the foreign jurisdiction or in the superior court in the county in which discovery is to be conducted.*

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

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

A request for relief pursuant to this section is properly denominated a “petition,” not a “motion.” For example, suppose a party to an out-of-state proceeding subpoenas personal records of a nonparty consumer under 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 also Sections 2029.610 (fees and format of papers relating to discovery dispute), 2029.620 (subsequent discovery dispute in same

case and county), 2029.630 (hearing date and briefing schedule), 2029.640 (deposition on notice or agreement), 2029.650 (writ petition).

(Emphasis added.) **The Commission should consider whether this language satisfactorily conveys its views or should be modified in some manner.**

A further point to consider is whether to include any portion of the NCCUSL's Comment to Section 6 in the revised tentative recommendation. For other provisions in the Commission's proposal that are based wholly or in part on UIDDA, we have included the corresponding UIDDA Comment in the proposal, with slight revisions as appropriate for the California setting and the minor deviations from UIDDA made by the Commission. See Attached Draft pp. 20-21 (proposed Code Civ. Proc. § 2029.200), 21-23 (proposed Code Civ. Proc. § 2029.300), 25 (proposed Code Civ. Proc. § 2029.500). The Commission typically does this when it proposes a provision that is based on a uniform act. We did not do so for the provision that is comparable to Section 6 (proposed Code Civ. Proc. § 2029.600), because we feared that including language from NCCUSL's Comment would muddy the water rather than furthering the interpretation of the provision intended by the Commission.

Does the Commission agree with the decision to omit the Section 6 Comment in the revised tentative recommendation? If so, then we would proceed without it in the revised tentative recommendation. If NCCUSL significantly changes the Section 6 Comment in finalizing the uniform act, we would bring the matter back to the Commission for reconsideration in drafting the final recommendation.

OPERATIVE DATE

In the attached draft of a revised tentative recommendation, the proposed legislation would have a delayed operative date of January 1, 2010. See Attached Draft p. 29 (proposed Code Civ. Proc. § 2029.900). An exception would be made for proposed Code of Civil Procedure Section 2029.390, which directs the Judicial Council to (1) prepare an application form for use in obtaining a subpoena for out-of-state litigation and (2) prepare a subpoena form specifically for discovery in out-of-state litigation, or modify one or more existing subpoena forms to include clear instructions for use in that setting. If the proposed legislation is enacted in 2008 as we hope, that particular provision would become operative on January 1, 2009, and the Judicial Council would have one year to prepare the

required forms before the legislation mandating use of those forms becomes operative.

Is this approach acceptable to the Commission? Would it prefer to use its previous approach, in which the legislation would become operative on January 1, 2009, the Judicial Council would be required to prepare the new forms by January 1, 2010, use of those forms would be mandatory only after they became available, and in the interim an application would be required but its format would not be specified? We did not take that approach in the attached draft because personnel from the Administrative Office of the Courts informally expressed concern about requiring parties to submit an application without specifying the format of the application.

NEXT STEP

If the Commission wants to finalize a recommendation for introduction in 2008, it needs to approve a revised tentative recommendation at the August meeting. Although a tentative recommendation was previously circulated for comment, it differed so much from the Commission's current proposal that it would be unwise to proceed without providing further opportunity for comment. The Commission should **carefully review the attached draft, determine whether any changes need to be made, and assess whether to approve a revised tentative recommendation at this time, or delay that step to allow time for further refinement of its proposal.**

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

Exhibit

**COMMENTS OF TONY KLEIN
OF PROCESS SERVER INSTITUTE**

From: psinstitute@juno.com
Subject: Recent Court Experiences re CCP 2029.010
Date: August 2, 2007
To: bgaal@clrc.ca.gov

Barbara:

I wanted to relate my recent experiences in requesting issuance of California subpoenas for a Texas action for witnesses in 2 counties. It will contrast the procedures and underscore the reason why your efforts to clarify this statute are so necessary.

San Francisco

I was requested to submit a request from Texas to issue a subpoena in San Francisco. The court's procedures have changed 3 times in 5 years. I originally submitted the Texas documents with a cover page, listing all the documents and conforming it to the California Rules of Court as to format.

The documents were rejected because the Texas documents were not certified.

I returned after receiving a certified copy. The court clerk rejected it again because the Civil Case Cover Sheet was not signed by a California attorney, and it didn't accompany a petition and a declaration. I informed him that the statute didn't require a petition or local counsel. I then asked what was to be included in the petition and declaration since it clearly exceed the requirements in the statute. He said something about requiring a petition to the court for issuing the subpoena and a declaration stating that the witness was necessary in the foreign state. He said he would not issue a case number or a subpoena without a California attorney bar number. I then asked, hypothetically, whether a party in pro per could make a request for a subpoena and he said he didn't know.

I then asked him for a written rule or directive as to what the court required. He told me that the requirements were not written, but an administrative directive from the court administrator's office and the presiding judge, and that he could not give me anything regarding the policy.

So my client hired a contract attorney for a few hundred dollars and he prepared a petition and declaration. After I discussed it with him, and after he called the court and received 3 different answers, he presented me a petition and declaration listing the case name as filed in Texas (Employees Retirement System v. Putnam).

I returned to court a third time and they rejected it again. The clerk stated that because the defendant was petitioning the court for the subpoena, the defendant was the petitioner.

I was then presented with another petition and declaration listing the defendant as a petitioner and the court clerk filed the petition and charged a full new case filing fee. As he handed me back the prepared subpoena I noticed that he had only stamped the number on it and had not issued it. When I asked him to issue it, he refused saying that clerks don't issue subpoenas anymore. He told me to find a pre-issued subpoena on the form rack and prepare it on that form instead. So I found the form and returned to my office and typed another subpoena on the pre-issued form, and served it with the filed petition and declaration.

I have attached a copy of the filed petition we filed so you can visualize it better. I have also attached a blank Civil Case Cover Sheet which seemed to be a major source of the problem.

I have written a letter to the presiding judge asking for a written directive and have spoken to an administrator at the court who is apparently working on it. The presiding judge responded to me in writing saying that the head clerk of the court will be working on it as well. That was almost a month ago.

San Mateo

In the same case I attached a face page to the same set of documents from Texas, and presented them to the San Mateo Superior Court. The clerk took it, reviewed it, filed the documents, gave it no case number, took no filing fee, and issued the subpoena by signing and sealing it.

My client, a court reporter in Texas, reported to me that San Diego Superior Court treated the filing in the same manner as in San Mateo.

Tony Klein

Process Server Institute
667 Folsom St., 2d Fl.
San Francisco, CA 94107
415/495-3850 <http://psinstitute.com>

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):		FOR COURT USE ONLY	
TELEPHONE NO.: _____ FAX NO.: _____			
ATTORNEY FOR (Name): _____			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF			
STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:			
CASE NAME:		CASE NUMBER:	
CIVIL CASE COVER SHEET <input type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
		JUDGE: DEPT:	

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): _____

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: _____

(TYPE OR PRINT NAME)	(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)
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NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

1 Robert W. Keenan (SB #139613)
2 Law Offices of Robert W. Keenan
2619 School Street
3 Oakland, California 94602
4 Telephone (510) 437-1425
Facsimile (510) 437-1425

**ENDORSED
FILED**
San Francisco County Superior Court

JUL 13 2007

GORDON PARK-LI, Clerk
BY: JUN P. PANELO
Deputy Clerk

5 Attorneys for Petitioners PUTNAM LLC,
6 d/b/a PUTNAM INVESTMENTS, PUTNAM
INVESTMENT MANAGEMENT, LLC and THE
7 PUTNAM ADVISORY COMPANY, LLC

8 IN THE SUPERIOR COURT OF CALIFORNIA
9 FOR THE CITY AND COUNTY OF SAN FRANCISCO

10 PUTNAM LLC, d/b/a PUTNAM
11 INVESTMENTS, PUTNAM
12 INVESTMENT MANAGEMENT, LLC and
THE PUTNAM ADVISORY COMPANY,
13 LLC

Case No. **CPF-07-507413**

**EX PARTE PETITION AND
DECLARATION OF ROBERT W.
KEENAN SUPPORTING THE
ISSUANCE OF A CALIFORNIA
DEPOSITION SUBPOENA IN A CIVIL
ACTION PENDING IN TEXAS**

Petitioners,

14 vs.

15 EMPLOYEES RETIREMENT SYSTEM
16 OF TEXAS,

Respondent.

18 I, ROBERT W. KEENAN, declare:

19 1. I am a member of the State Bar of California and serve as local counsel for
20 Petitioners PUTNAM LLC, d/b/a PUTNAM INVESTMENTS, PUTNAM INVESTMENT
21 MANAGEMENT, LLC and THE PUTNAM ADVISORY COMPANY, LLC ("Petitioners"). I
22 make this declaration in support of the issuance of a California Deposition Subpoena in a civil
23 action that is pending in the State of Texas. This Declaration is based upon my personal
24 knowledge, except for those facts that are alleged upon information and belief, in which case I
25 believe such facts to be true.

26 2. Petitioners are all of the defendants in the case encaptioned *Employees Retirement*
27 *System of Texas v. Putnam, LLC, d/b/a Putnam Investments, Putnam Investment Management,*
28 *LLC and The Putnam Advisory Company, LLC*; Case No. GN503755; In the District Court of

LAW OFFICES OF
ROBERT W. KEENAN
2619 School Street
Oakland, CA 94602
(510) 437-1425

1
EX PARTE DECLARATION OF ROBERT W. KEENAN SUPPORTING THE ISSUANCE OF
A CALIFORNIA DEPOSITION SUBPOENA IN A CIVIL ACTION PENDING IN TEXAS

1 District Court of Travis County, Texas, 200th Judicial District.

2 3. Petitioners seek to take the deposition on written questions of the Custodian of
3 Records of CALLAN ASSOCIATES, 101 California Street, Suite 3500, San Francisco, CA
4 94111, pursuant to a Notice of Intention to take Deposition on Written Questions of the
5 Custodian of Records for Callan Associates with Subpoena Duces Tecum, a true and correct
6 copy of which is attached hereto as Exhibit A.

7 4. I am informed and believe and thereon declare that said custodian(s) of records
8 has knowledge of relevant and important information concerning facts at issue in the above-
9 referenced case and cannot be compelled to testify without the issuance of a California
10 Deposition Subpoena.

11 5. This deposition will be taken pursuant to Letter Rogatory for the Deposition upon
12 Written Questions of the Custodian of Records for Callan Associates, a true and correct copy of
13 which is attached hereto as Exhibit B. Said Letter Rogatory was issued by the District Court of
14 Travis County, Texas, 200th Judicial District, the court in which this action was filed.

15 6. Esquire Deposition Services, 505 Sansome Street, Fifth Floor, San Francisco, CA
16 94111, has been authorized to take the deposition on written questions and receive production of
17 records from the Custodian of Records of CALLAN ASSOCIATES at 9:00 a.m. on July 26,
18 2007.

19 7. Accordingly, pursuant Cal. Code. Civ. Proc. §§ 1986 and 2029.010, I hereby
20 petition the Clerk of this Court to issue the Deposition Subpoena presented concurrently
21 herewith, a true and correct copy of which is attached hereto as Exhibit C.

22 I declare under the penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct. EXECUTED AT Oakland, California on July 11, 2007.

24
25 
26 Robert W. Keenan
27

28
LAW OFFICES OF
ROBERT W. KEENAN
2619 School Street
Oakland, CA 94602
(510) 437-1423

CAUSE NO. GN503755

EMPLOYEES RETIREMENT SYSTEM OF TEXAS,

Plaintiff,

vs.

PUTNAM, LLC, d/b/a/ PUTNAM INVESTMENTS, PUTNAM INVESTMENT MANAGEMENT, LLC, and THE PUTNAM ADVISORY COMPANY, LLC,

Defendants.

§ IN THE DISTRICT COURT
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§ TRAVIS COUNTY TEXAS
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§
§ 200TH JUDICIAL DISTRICT

NOTICE OF INTENTION TO TAKE DEPOSITION ON WRITTEN QUESTIONS OF THE CUSTODIAN OF RECORDS FOR CALLAN ASSOCIATES WITH SUBPOENA DUCES TECUM

TO: Custodian of Records for CALLAN ASSOCIATES, 101 California Street, Suite 3500, San Francisco, CA 94111

TO: EMPLOYEES RETIREMENT SYSTEM OF TEXAS, by and through its attorneys of record, John J. McKetta, III, Steven Smit, Chris Elliott, Andrea Stover, and Mary A. Keeney, Graves, Dougherty, Hearon & Moody, 401 Congress Avenue, Suite 2200, Austin, Texas 78767.

Please take notice that pursuant to Rule 200.1 of the Texas Rules of Civil Procedure, the Deposition on Written Questions of the Custodian of Records for CALLAN ASSOCIATES will be taken at CALLAN ASSOCIATES, 101 California Street, Suite 3500, San Francisco, CA 94111 on July 26, 2007 at 9:00 a.m. or at such other time and place as is agreed on by counsel.

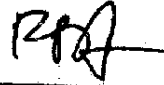
Pursuant to Rule 200.1(b) of the Texas Rules of Civil Procedure, CALLAN ASSOCIATES shall produce, at the time and place specified above, the documents, tangible things and categories of documents specified in Exhibit A. Deponent shall appear for the deposition on written questions before a certified court reporter at the time and place specified in this notice.



Respectfully submitted,

RATLIFF LAW FIRM, P.L.L.C.
600 Congress Avenue
Suite 3100
Austin, Texas 78701
(512) 493-9600
(512) 494-9625 [fax]

By:


Shannon H. Ratliff
State Bar No. 16573000
Ryan A. Botkin
State Bar No. 00793366

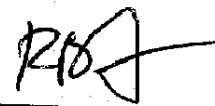
ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I, Ryan A. Botkin, hereby certify that a true and correct copy of the foregoing *Notice of Intention to Take Deposition on Written Questions of Custodian of Records for Callan Associates with Subpoena Duces Tecum* was served on counsel for ERS, as shown below, on June 21, 2007.

John J. McKetta, III
Steven Smit
Chris Elliott
Andrea Stover
GRAVES, DOUGHERTY, HEARON
& MOODY
401 Congress Avenue, Suite 2200
Austin, Texas 78767

Via Certified Mail/RRR and Facsimile


Ryan A. Botkin

Document Requests For Callan Subpoena

1. All documents reflecting communications, including e-mails, between Callan and the Employees Retirement System of Texas ("ERS") regarding market timing, excessive trading, or short term trading from January 2000 to the present.
2. All documents reflecting communications, including e-mails, between Callan and ERS regarding Putnam from January 2001 to the present.
3. All documents reflecting communications, including e-mails, between Callan and ERS regarding Templeton from January 2001 to the present.
4. All documents reflecting communications, including e-mails, between Callan and ERS regarding DuPont from January 2001 to the present.
5. All documents reflecting communications, including e-mails, between Callan and ERS regarding Dresdner from January 2001 to the present.
6. All documents reflecting communications, including e-mails, between Callan and ERS regarding Alliance from January 2001 to the present.
7. All documents reflecting communications, including e-mails, between Callan and Putnam regarding ERS from January 2001 to the present.
8. All documents prepared by Callan for ERS regarding Putnam or ERS's Putnam-advised portfolio from January 2001 to the present.
9. All documents prepared by Callan for ERS regarding Templeton or ERS's Templeton-advised portfolio from January 2001 to the present.
10. All documents prepared by Callan for ERS regarding DuPont or ERS's DuPont-advised portfolio from January 2001 to the present.
11. All documents prepared by Callan for ERS regarding Dresdner or ERS's Dresdner-advised portfolio from January 2001 to the present.
12. All documents prepared by Callan for ERS regarding Alliance or ERS's Alliance-advised portfolio from January 2001 to the present.
13. All documents regarding ERS's Putnam-advised portfolio from January 2001 to the present.
14. All documents regarding ERS's Templeton-advised portfolio from January 2001 to the present.

15. All documents regarding ERS's DuPont-advised portfolio from January 2001 to the present.
16. All documents regarding ERS's Dresdner-advised portfolio from January 2001 to the present.
17. All documents regarding ERS's Alliance-advised portfolio from January 2001 to the present.
18. All documents regarding the performance of ERS's Putnam-advised portfolio, including its performance (i) relative to the benchmark, (ii) relative to ERS's Templeton-advised portfolio, and (iii) relative to ERS's Dupont-advised portfolio.
19. Documents sufficient to reflect the performance of ERS's investments relative to that of its peers, including other public pensions and state retirement systems, from January 2000 to the present.
20. All documents regarding the performance of Putnam's International Concentrated Core Product from January 2001 to the present.
21. Representative samples of Callan training materials used with respect to training its own personnel as to the evaluation and due diligence of investment advisors from 2000 to the present.
22. All Callan employee codes of ethics or codes of conduct from January 2001 to the present.

CAUSE NO. GN503755

EMPLOYEES RETIREMENT SYSTEM OF TEXAS,

Plaintiff,

vs.

PUTNAM, LLC, d/b/a/ PUTNAM INVESTMENTS, PUTNAM INVESTMENT MANAGEMENT, LLC, and THE PUTNAM ADVISORY COMPANY, LLC,

Defendants.

§ IN THE DISTRICT COURT
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§ TRAVIS COUNTY TEXAS
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§ 200TH JUDICIAL DISTRICT

LETTER ROGATORY FOR THE DEPOSITION UPON WRITTEN QUESTIONS OF THE CUSTODIAN OF RECORDS FOR CALLAN ASSOCIATES

TO THE HONORABLE JUDGE OF SUPERIOR COURT OF SAN FRANCISCO COUNTY:

The above-entitled case is pending in the 200th Judicial District of Travis County, Texas, and it appears to the Court that the just determination of the issues therein presented requires that Callan Associates, 101 California Street, Suite 3500, San Francisco, CA 94111, submit to a deposition on written questions as listed in the Notice Of Intention To Take Deposition On Written Questions Of The Custodian Of Records For Callan Associates With Subpoena Duces Tecum and produce the documents as listed therein.

It is therefore requested that you assist the Court in serving the interests of justice by causing a subpoena duces tecum to be issued to and compelling Callan Associates to appear before you, or before ESQUIRE DEPOSITION SERVICES 505 Sansome Street, Fifth Floor, San Francisco, CA 94111, to answer the written questions and to produce the documents listed in the attached Notice at 9:00A.M on July 26, 2007.

SIGNED this 6 day of



July, 2007.
Rachel V. Almaraz
DISTRICT CLERK

I, AMALIA RODRIGUEZ-MENDOZA, District Clerk of Travis County, Texas, do hereby certify that this is a true and correct copy of Letter Rogatory as same appears of record in my office. Witness my hand and seal of office on July 6 day of July 2007.

AMALIA RODRIGUEZ-MENDOZA
DISTRICT CLERK
BY Rachel V. Almaraz
DEPUTY

SUBP-020

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Robert W. Keenan, Esq. (SBN# 139613) Law Offices of Robert W. Keenan 2619 School Street Oakland, CA 94602 TELEPHONE NO.: 510-437-1425 FAX NO. (Optional): E-MAIL ADDRESS (Optional): rw.keenan@comcast.net ATTORNEY FOR (Name): Petitioner Putnam, LLC, et al.	FOR COURT USE ONLY	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: 400 McAllister Street CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME: Civic Center Courthouse		
PETITIONER: Putnam, LLC, et al. RESPONDENT: Employees Retirement System of Texas		
DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS		CASE NUMBER:

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):
 Callan Associates, 101 California Street, Ste. 3500, San Francisco, CA 94111

1. YOU ARE ORDERED TO APPEAR IN PERSON TO TESTIFY AS A WITNESS in this action at the following date, time, and place:

Date: July 27, 2007 Time: 9:00 A.M. Address: Esq. Dep. Svcs. 505 Sansome St. 5th Fl. San Francisco

- a. As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in item 4. (Code Civ. Proc., § 2025.220(a)(6)).
 - b. You are ordered to produce the documents and things described in item 3.
 - c. This deposition will be recorded stenographically through the instant visual display of testimony, and by audiotape videotape
 - d. This videotape deposition is intended for possible use at trial under Code of Civil Procedure section 2025.620(d).
2. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.
3. The documents and things to be produced and any testing or sampling being sought are described as follows:
 All documents described in Exhibit A hereto ("Document Requests for Callan Subpoena").
 Continued on Attachment 3.
4. If the witness is a representative of a business or other entity, the matters upon which the witness is to be examined are described as follows:
 All questions contained in Exhibit B hereto ("Direct Questions to be Propounded to the Witness").
 Continued on Attachment 4.
5. **IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.**
6. *At the deposition, you will be asked questions under oath. Questions and answers are recorded stenographically at the deposition; later they are transcribed for possible use at trial. You may read the written record and change any incorrect answers before you sign the deposition. You are entitled to receive witness fees and mileage actually traveled both ways. The money must be paid, at the option of the party giving notice of the deposition, either with service of this subpoena or at the time of the deposition.*

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued:

 (TYPE OR PRINT NAME)

 (SIGNATURE OF PERSON ISSUING SUBPOENA)

(Proof of service on reverse)

(TITLE)

SUBP-020

PLAINTIFF/PETITIONER: Employees Retirement System of Texas	CASE NUMBER:
DEFENDANT/RESPONDENT: Putnam, LLC, d/b/a Putman Investments, et al.	

PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS

1. I served this *Deposition Subpoena for Personal Appearance and Production of Documents and Things* by personally delivering a copy to the person served as follows:

a. Person served (name):

b. Address where served:

c. Date of delivery:

d. Time of delivery:

e. Witness fees and mileage both ways (check one):

(1) were paid. Amount: \$ _____

(2) were not paid.

(3) were tendered to the witness's public entity employer as required by Government Code section 68097.2. The amount tendered was (specify): \$ _____

f. Fee for service: \$ _____

2. I received this subpoena for service on (date):

3. Person serving:

a. Not a registered California process server.

b. California sheriff or marshal.

c. Registered California process server.

d. Employee or independent contractor of a registered California process server.

e. Exempt from registration under Business and Professions Code section 22350(b).

f. Registered professional photocopier.

g. Exempt from registration under Business and Professions Code section 22451.

h. Name, address, telephone number, and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(For California sheriff or marshal use only)
I certify that the foregoing is true and correct.

Date:

Date:

(SIGNATURE)

(SIGNATURE)

Document Requests For Callan Subpoena

1. All documents reflecting communications, including e-mails, between Callan and the Employees Retirement System of Texas ("ERS") regarding market timing, excessive trading, or short term trading from January 2000 to the present.
2. All documents reflecting communications, including e-mails, between Callan and ERS regarding Putnam from January 2001 to the present.
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17. All documents regarding ERS's Alliance-advised portfolio from January 2001 to the present.
18. All documents regarding the performance of ERS's Putnam-advised portfolio, including its performance (i) relative to the benchmark, (ii) relative to ERS's Templeton-advised portfolio, and (iii) relative to ERS's Dupont-advised portfolio.
19. Documents sufficient to reflect the performance of ERS's investments relative to that of its peers, including other public pensions and state retirement systems, from January 2000 to the present.
20. All documents regarding the performance of Putnam's International Concentrated Core Product from January 2001 to the present.
21. Representative samples of Callan training materials used with respect to training its own personnel as to the evaluation and due diligence of investment advisors from 2000 to the present.
22. All Callan employee codes of ethics or codes of conduct from January 2001 to the present.

No. _____

Employees Retirement System
of Texas

vs.
Putnam, LLC, d/b/a Putnam Investments,
Putnam Investment Management, LLC, and
The Putnam Advisory Company, LLC

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IN THE SUPERIOR COURT OF

CALIFORNIA,

COUNTY OF SAN FRANCISCO

DIRECT QUESTIONS TO BE PROPOUNDED TO THE WITNESS

Custodian of Records for: **Callan Associates**

Records Pertaining To: **Any and all records as described on the attached Exhibit 'A'**

Type of Records: **Any and all records as described on the attached Exhibit 'A'**

1. Please state your full name.

Answer: _____

2. Please state by whom you are employed and the business address.

Answer: _____

3. What is the title of your position or job?

Answer: _____

4. Are these memoranda, reports, records, or data compilations, outlined in the subpoena duces tecum, pertaining to the above-named person, in your custody or subject to your control, supervision or direction?

Answer: _____

5. Are you able to identify these aforementioned records as the originals or true and correct copies of the originals?

Answer: _____

6. Please hand to the Officer taking this deposition copies of the memoranda, reports, records, or data compilations, mentioned in Question No. 4. Have you complied? If not, why?

Answer: _____

7. Are the copies which you have handed to the Officer taking this deposition true and correct copies of such memoranda, reports, records, or data compilations.

Answer: _____

8. Were such memoranda, reports, records, or data compilations kept in the regular course of business of this facility?

Answer: _____

9. Was it in the regular course of business of this facility for a person with knowledge of the acts, events, conditions, opinion, or diagnoses, recorded to make the record or to transmit information thereof to be included in such record?

Answer: _____

Order No. 01-37786-03

EXHIBIT B

10. Were the entries on these records made at or shortly after the time of the transaction recorded?

Answer: _____

11. Was the method of preparation of these records trustworthy?

Answer: _____

12. How long does your facility maintain the type of records requested by this subpoena?

Answer: _____

13. Are you aware of any other entities that may have records that fall within the scope of this subpoena?

Answer: _____

WITNESS (Custodian of Records)

Before me, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument in the capacity therein stated, who being first duly sworn, stated upon his/her oath that the answers to the foregoing questions are true and correct. I further certify that the records attached hereto are exact duplicates of the original records.

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 20_____.

NOTARY PUBLIC

My Commission Expires: _____

FOR APPROVAL

**UNIFORM INTERSTATE DEPOSITIONS AND
DISCOVERY ACT**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-FIFTEENTH YEAR
PASADENA, CALIFORNIA
JULY 27 – AUGUST 3, 2007

**UNIFORM INTERSTATE DEPOSITIONS AND
DISCOVERY ACT**

UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Interstate Depositions and Discovery Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) “Foreign jurisdiction” means a state other than this state.

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

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

(4) “State” means 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.

(5) “Subpoena” means a document, however denominated, issued under authority of a court of record requiring a person to:

(A) attend and give testimony at a deposition;

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

(C) permit inspection of premises under the control of the person.

SECTION 3. ISSUANCE OF SUBPOENA.

(a) A party may submit a foreign subpoena to a clerk of court in the [county, district, circuit, or parish] in which discovery is sought to be conducted in this state. The request for and issuance of a subpoena in this state under this act shall not constitute making an appearance in the courts of this state.

(b) When a party submits a foreign subpoena to a clerk of court in this state, the clerk, in accordance with local procedure, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed. The subpoena must incorporate the terms used in the foreign subpoena and 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.

SECTION 4. SERVICE OF SUBPOENA. A subpoena issued by a clerk of court under Section 3 shall be served in compliance with [cite applicable rules or statutes of this state for service of subpoena].

SECTION 5. DEPOSITION, PRODUCTION, AND INSPECTION. When a subpoena issued under Section 3 commands a person to attend and give testimony at a deposition, produce designated books, documents, records, electronically stored information, or tangible things, or permit inspection of premises, the time and place and the manner of the taking of the deposition, the production, or the inspection must comply with [cite applicable rules or statutes of this state].

SECTION 6. APPLICATION TO COURT. An application to the court for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court under

Section 3 must comply with the applicable rules or statutes of this state and be submitted to the court in the [county, district, circuit, or parish] in which discovery is to be conducted.

SECTION 7. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 8. APPLICATIONS TO PENDING ACTIONS. This [act] applies to requests for discovery in cases pending on the effective date of this [act].

SECTION 9. EFFECTIVE DATE. This [act] takes effect ____.

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

Revised TENTATIVE RECOMMENDATION

Deposition in Out-of-State Litigation

[Date To Be Determined]

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 _____.

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.

California Law Revision Commission

4000 Middlefield Road, Room D-1

Palo Alto, CA 94303-4739

650-494-1335

<commission@clrc.ca.gov>

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, hearing date and briefing schedule, 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.¹ 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”).² 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 2029.010³ governs the procedure for deposing⁴
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,⁵

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). 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,⁶ letters rogatory,⁷ letter of request,⁸ or commission⁹ 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.¹⁰ 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.¹¹ 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.¹²

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 the American Bar Association and the National Conference of Commissioners on Uniform State Laws (“NCCUSL”). 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.¹³ 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.¹⁴

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.¹⁵ 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-
18 of-state documents are acceptable, (4) other aspects of the procedure for issuing a
19 subpoena that compels discovery for an out-of-state proceeding, (5) the use of

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 (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 local counsel in conducting such discovery, and (6) the procedure for resolving a
2 dispute arising in connection with discovery.

3 ***Type of Deponent***

4 By its terms, Section 2029.010 is limited to “the oral or written deposition of a
5 natural person in California” This limitation was deliberately imposed in the
6 Civil Discovery Act of 1986.¹⁶ The drafters’ apparent concern was that some
7 jurisdictions might not permit a deposition of an organization (as opposed to a
8 natural person) and litigants might try to subvert such a restriction by seeking to
9 depose an organization in California instead of the forum state.¹⁷

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

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

21 ***Type of Discovery Sought***

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

28 In contrast, UIDDA clearly encompasses a deposition that is solely for the
29 production of tangible items.²² UIDDA also expressly encompasses a request to

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. Code §§ 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.²³ The Commission recommends that California
2 follow UIDDA’s approach on these points.²⁴

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 record²⁵ of another jurisdiction.²⁶ “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.²⁷

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 context²⁸ and UIDDA’s requirement that a
29 “subpoena” be submitted to the California court from which a subpoena is
30 requested.²⁹ Either the original or a true and correct copy would suffice.³⁰

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.³¹ 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.³²

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.³³

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 jurisdiction³⁴ would be sufficient to compel the clerk of a court to issue a subpoena

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 (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.” 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.³⁵ UIDDA does not specify a
2 fee for the service, but contemplates that there will be one.³⁶ 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.³⁷

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,³⁸ (2) pay a modest fee of
10 \$20 per subpoena, which is comparable to the fee for issuing a commission to take
11 an out-of-state deposition,³⁹ and (3) submit an application on a form prescribed by
12 the Judicial Council.⁴⁰ The proper court for filing the application would be the
13 superior court of the county in which the discovery is to be taken.⁴¹

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.⁴² 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.⁴³ 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

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.⁴⁴ The Judicial Council would have the option of either creating new
3 forms or modifying existing forms to meet this requirement.⁴⁵ 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.⁴⁶ 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.⁴⁷

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.⁴⁸ 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

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.⁴⁹ 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.⁵⁰ 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.”⁵¹ 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,⁵²
12 because omitting it might trigger concerns that the rule is different in California.
13 **The Commission specifically encourages comment on whether inclusion of**
14 **this sentence is advisable.**

15 *Issuance of a Subpoena By Counsel*

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

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

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 **Discovery Dispute**

2 If a dispute arises regarding discovery conducted in California for a proceeding
3 pending elsewhere, it may be necessary for the deponent or a party to seek relief in
4 court. Section 2029.010 does not provide guidance on the proper procedure to
5 follow in that situation.

6 The proposed law would eliminate this ambiguity. If the deponent is involved in
7 the dispute, any request for relief would have to comply with California law and
8 be filed in the superior court of the county in which discovery is to be conducted.⁵⁶
9 That would further the state’s interest in protecting its residents from unreasonable
10 or unduly burdensome discovery requests. If the deponent is not involved in the
11 dispute, relief could be sought either in the foreign jurisdiction or in the superior
12 court of the county in which discovery is to be conducted.⁵⁷

13 UIDDA appears to take essentially the same approach. The pertinent text does
14 not draw a distinction between a dispute that affects the deponent and one that
15 does not, but the corresponding Comment does.⁵⁸

16 Upon seeking relief in a California court, the petitioner would have to pay a first
17 appearance fee,⁵⁹ as would each person who responds to the petition.⁶⁰ The amount
18 of these first appearance fees would be \$320, the same as the corresponding first
19 appearance fees for an unlimited civil case pending in a California court.⁶¹ This fee
20 amount is appropriate because resolving the dispute might involve difficult choice-
21 of-law issues or other complications arising because the discovery in question is

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 being conducted for an out-of-state case, not a California case. Additionally,
2 although the matter consists of a discovery dispute rather than an entire case, it
3 may require at least as much effort for the court to resolve as many cases that are
4 filed in California.⁶²

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

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

18 Further, the proposed law would clarify the briefing schedule and notice
19 requirements that apply to a petition for relief pertaining to discovery in an out-of-
20 state case. Those matters would be governed by Code of Civil Procedure Section
21 1005, the same as for a discovery motion in a case pending within the state.⁶⁹

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

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

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 different⁷⁰ or their roles might be
2 reversed.⁷¹

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.⁷² 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.⁷³

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.⁷⁴ But if a disputant is
16 not a party to the out-of-state case, or has previously paid a first appearance fee,
17 the disputant would only have to pay \$40 for filing a petition and would not have
18 to pay anything for filing a response.⁷⁵ To assist in determination of the
19 appropriate fees, the first page of a subsequent petition would have to clearly
20 indicate that it is not the first petition filed in the county pertaining to the out-of-
21 state case.⁷⁶

22 ***Subsequent Discovery Dispute in Another County***

23 At times, two or more discovery disputes relating to the same out-of-state case
24 might arise in different counties. In that situation, the recommended legislation
25 would require that each petition for relief be filed in the superior court of the
26 county in which the discovery in question is being conducted.⁷⁷ This approach is

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 necessary to avoid forcing a California witness to appear in a court far away from
2 where the witness resides.

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

7 ***Deposition on Notice or Agreement***

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

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

21 When this occurs, it should be possible for the deponent or party to resort to the
22 California court regardless of whether the deposition is being taken pursuant to a
23 California subpoena. The opposite approach — requiring a California subpoena to
24 enforce discovery rights and obligations relating to a deposition on notice or

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 agreement taken in California for an out-of-state case — would entail needless
2 paperwork, expense, and expenditure of judicial and litigant resources in the many
3 instances in which no discovery dispute occurs. The recommended legislation
4 would thus make clear that if a party to an out-of-state case deposes a witness in
5 this state by properly issued notice or by agreement, the deponent or any party
6 may seek relief in a California court regardless of whether the deposing party
7 obtained a subpoena from a California court.⁸¹

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

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

17 **Effect of the Proposed Reforms**

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

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*.

Note. In the following table of contents, provisions that consist partially or entirely of NCCUSL language are shown in gray.

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PROPOSED LEGISLATION

1 **Note.** In the following draft, NCCUSL’s language is shown in gray. In some places, we have
2 made minor deviations from NCCUSL’s language to conform to stylistic conventions for drafting
3 California statutes or nomenclature used in the California court system (e.g., alphabetical rather
4 than numerical labeling of subdivisions; capitalization of the first word of each paragraph;
5 avoidance of semicolons; use of “shall” instead of “must”; referring to “the superior court”
6 instead of “a court”). These places are shown in gray despite the minor deviations from
7 NCCUSL’s language. An ellipsis within a gray area (the ... Interstate) indicates where one or
8 more words within a phrase proposed by NCCUSL have been omitted.

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

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

12 CHAPTER 12. ~~DEPOSITION~~ DISCOVERY IN ACTION PENDING
13 OUTSIDE CALIFORNIA

14 **Comment.** To improve clarity, the heading of Chapter 12 is amended to replace the reference
15 to “Deposition” with a reference to “Discovery.” This change helps to emphasize that the chapter
16 applies not only to an oral deposition, but also to other forms of discovery. For example, the
17 chapter applies to a deposition solely for the production of business records (see Sections
18 2020.010(a)(3), 2020.410-2020.440), yet some in some jurisdictions such a procedure might not
19 be referred to as a “deposition.”

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

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

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

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

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

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

1 Article 1. Interstate and International Depositions and Discovery Act

2 § 2029.100. Short title [UIDDA § 1]

3 2029.100. This article may be cited as the ... Interstate and International
4 Depositions and Discovery Act.

5 **Comment.** Section 2029.100 is similar to Section 1 of the Uniform Interstate Depositions and
6 Discovery Act (2007) (“UIDDA”). This article differs in two significant respects from UIDDA:
7 (1) it addresses procedural details not addressed in UIDDA (see Sections 2029.300, 2029.350,
8 2029.390, 2029.600, 2029.610, 2029.620, 2029.630, 2029.640, 2029.650), and (2) it governs
9 discovery for purposes of an action pending in a foreign nation, not just discovery for purposes of
10 an action pending in another jurisdiction of the United States (see Section 2029.200(a)(2)).

11 The entire article may be referred to as the “Interstate and International Depositions and
12 Discovery Act.” The portions of the article that are drawn from the Uniform Interstate
13 Depositions and Discovery Act may collectively be referred to as the “California version of the
14 Uniform Interstate Depositions and Discovery Act.” See Section 2029.700 (uniformity of
15 application and construction).

16 § 2029.200. Definitions [UIDDA § 2]

17 2029.200. In this article:

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

19 (1) A state other than this state.

20 (2) A foreign nation.

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

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

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

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

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

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

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

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

42 Subdivision (c) defines “person” broadly. This is consistent with the general code-wide
43 definition in Section 17 (“the word ‘person’ includes a corporation as well as a natural person”).
44 For guidance on interpreting other provisions of this code referring to a “person,” see *Hassan v.*

1 Mercy American River Hospital, 31 Cal. 4th 709, 715-18, 74 P.3d 726, 3 Cal. Rptr. 3d 623
2 (2003) (whether “person” as used in particular section of Code of Civil Procedure includes
3 corporation or non-corporate entity “is ultimately a question of legislative intent”); Diamond
4 View Limited v. Herz, 180 Cal. App. 3d 612, 616-19, 225 Cal. Rptr. 651 (1986) (“[T]he
5 preliminary definition contained in section 17 is superseded when it obviously conflicts with the
6 Legislature’s subsequent use of the term in a different statute.”); Oil Workers Int’l Union v.
7 Superior Court, 103 Cal. App. 2d 512, 570-71, 230 P.2d 71 (1951) (unincorporated association is
8 “person” for purpose of statutes in Code of Civil Procedure governing contempt).

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

13 **Background from Uniform Act**

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

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

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

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

28 **§ 2029.300. Issuance of subpoena by clerk of court [UIDDA § 3]**

29 **2029.300. (a)** A party may submit the original or a true and correct copy of a
30 foreign subpoena to the clerk of the superior court in the county in which
31 discovery is sought to be conducted in this state. The request for and issuance of a
32 subpoena in this state under this section shall not constitute making an appearance
33 in the courts of this state.

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

36 (1) Submit an application requesting that the superior court issue a subpoena
37 with the same terms as the foreign subpoena. The application shall be on a form
38 prescribed by the Judicial Council pursuant to Section 2029.390.

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

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

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

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

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

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

7 (4) It shall be on a form prescribed by the Judicial Council pursuant to Section
8 2029.390.

9 **Comment.** Section 2029.300 is added to clarify the procedure for obtaining a California
10 subpoena to obtain discovery from a witness in this state for use in a proceeding pending in
11 another United States jurisdiction. For the benefit of the party seeking the subpoena and the court
12 issuing it, the procedure is designed to be simple and expeditious.

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

16 Subdivision (a) makes clear that requesting and obtaining a subpoena under this section does
17 not constitute making an appearance in the California courts. For further guidance on avoiding
18 unauthorized practice of law, see Bus. & Prof. Code § 6125; Cal. R. Ct. 966, 983; Report of the
19 California Supreme Court Multijurisdictional Practice Implementation Committee: Final Report
20 and Proposed Rules (March 10, 2004); California Supreme Court Advisory Task Force on
21 Multijurisdictional Practice, Final Report and Recommendations (Jan. 7, 2002). In general, a
22 party to out-of-state litigation may take a deposition in California without retaining local counsel
23 if the party is self-represented or represented by an attorney duly admitted to practice in another
24 jurisdiction of the United States. *Birbrower v. Superior Court*, 17 Cal. 4th 119, 127, 70 Cal. Rptr.
25 2d 304, 949 P.2d 1 (1998) (“[P]ersons may represent themselves and their own interests
26 regardless of State Bar membership...”); Cal. R. Ct. 966; Final Report and Recommendations,
27 *supra*, at 24. Different considerations may apply, however, if a discovery dispute arises in
28 connection with such a deposition and a party to out-of-state litigation wants to appear in a
29 California court with respect to the dispute.

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

32 **Background from Uniform Act**

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

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

1 The advantages of this process are readily apparent. The act of the clerk of court is ministerial,
2 yet is sufficient to invoke the jurisdiction of the discovery state over the deponent. The only
3 documents that need to be presented to the clerk of court in the discovery state are the subpoena
4 issued in the trial state and the draft subpoena of the discovery state. [Note: In California, an
5 application form would also be required.] There is no need to hire local counsel to have the
6 subpoena issued in the discovery state, and there is no need to present the matter to a judge in the
7 discovery state before the subpoena can be issued. In effect, the clerk of court in the discovery
8 state simply reissues the subpoena of the trial state, and the new subpoena is then served on the
9 deponent in accordance with the laws of the discovery state. The process is simple and efficient,
10 costs are kept to a minimum, and local counsel and judicial participation are unnecessary to have
11 the subpoena issued and served in the discovery state.

12 The Act will not change or repeal the law in those states that still require a commission or
13 letters rogatory to take a deposition in a foreign jurisdiction. The Act does, however, repeal the
14 law in those discovery states that still require a commission or letter rogatory from a trial state
15 before a deposition can be taken in those states. It is the hope of the Conference that this Act will
16 encourage states that still require the use of commissions or letters rogatory to repeal those laws.

17 The Act requires that, when the subpoena is served, it contain or be accompanied by the names,
18 addresses, and telephone numbers of all counsel of record and of any party not represented by
19 counsel. The committee believes that this requirement imposes no significant burden on the
20 lawyer issuing the subpoena, given that the lawyer already has the obligation to send a notice of
21 deposition to every counsel of record and any unrepresented parties. The benefits in the discovery
22 state, by contrast, are significant. This requirement makes it easy for the deponent (or, as will
23 frequently be the case, the deponent's lawyer) to learn the names of and contact the other lawyers
24 in the case. This requirement can easily be met, since the subpoena will contain or be
25 accompanied by the names, addresses, and telephone numbers of all counsel of record and of any
26 party not represented by counsel (which is the same information that will ordinarily be contained
27 on a notice of deposition and proof of service).

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

29 **Note.** Proposed Code of Civil Procedure Section 2029.300(a) would state that the “request for
30 and issuance of a subpoena in this state under this section shall not constitute making an
31 appearance in the courts of this state.” As the Comment reflects, there is already other authority
32 addressing this point in California. The quoted sentence is drawn from UIDDA § 3. Is it advisable
33 to include it in proposed Section 2029.300? Would omitting it raise concerns that requesting a
34 subpoena under the proposed law might constitute unauthorized practice of law? The
35 Commission is particularly interested in receiving comments on these points.

36 **§ 2029.350. Issuance of subpoena by local counsel**

37 2029.350. (a) Notwithstanding Sections 1986 and 2029.300, if a party to a
38 proceeding pending in a foreign jurisdiction retains an attorney licensed to practice
39 in this state, who is an active member of the State Bar, and that attorney receives
40 the original or a true and correct copy of a subpoena issued by a court of record of
41 a foreign jurisdiction, the attorney may issue a subpoena under this article,
42 incorporating the terms used in the foreign subpoena.

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

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

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

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

4 (4) It shall be on a form prescribed by the Judicial Council pursuant to Section
5 2029.390.

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

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

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

24 **§ 2029.390. Judicial Council forms**

25 2029.390. On or before January 1, 2010, the Judicial Council shall do all of the
26 following:

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

28 (b) Prepare one or more new subpoena forms that include clear instructions for
29 use in issuance of a subpoena under Section 2029.300 or 2029.350. Alternatively,
30 the Judicial Council may modify one or more existing subpoena forms to include
31 clear instructions for use in issuance of a subpoena under Section 2029.300 or
32 2029.350.

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

35 **Note.** Section 2029.390 would set a deadline of January 1, 2010, for the Judicial Council to
36 prepare the required forms. This deadline is premised on enactment of the proposed legislation in
37 2008, with an effective date of January 1, 2009, and a delayed operative date of January 1, 2010
38 (except for this section). That would give the Judicial Council one year to prepare the forms
39 before the legislation becomes operative. The deadline will have to be adjusted if the proposed
40 legislation is not introduced in the Legislature until 2009 or later.

41 **§ 2029.400. Service of subpoena [UIDDA § 4]**

42 2029.400. A subpoena issued ... under this article shall be served in compliance
43 with the law of this state, including, without limitation, Chapter 4 (commencing
44 with Section 413.10) of Title 5 of Part 2.

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

4 **§ 2029.500. Deposition, production, and inspection [UIDDA § 5]**

5 2029.500. When a subpoena issued under this article commands a person to
6 attend and give testimony at a deposition, produce designated books, documents,
7 records, electronically stored information, or tangible things, or permit inspection
8 of premises, or discovery is taken in the state pursuant to properly issued notice or
9 by agreement, the time and place and the manner of the taking of the deposition,
10 the production, or the inspection shall comply with the law of this state, including,
11 without limitation, Title 4 (commencing with Section 2016.010) of Part 4.

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

16 **Background from Uniform Act**

17 The Act requires that the discovery permitted by this section must comply with the laws of the
18 discovery state. The discovery state has a significant interest in these cases in protecting its
19 residents who become non-party witnesses in an action pending in a foreign jurisdiction from any
20 unreasonable or unduly burdensome discovery request. Therefore, the committee believes that the
21 discovery procedure must be the same as it would be if the case had originally been filed in the
22 discovery state.

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

24 **§ 2029.600. Discovery dispute [UIDDA § 6]**

25 2029.600. (a) If a dispute arises relating to discovery under this article, and the
26 deponent is involved in the dispute, any request ... for a protective order or to
27 enforce, quash, or modify a subpoena, or for other relief ... shall comply with the
28 applicable rules or statutes of this state and be filed in the superior court in the
29 county in which discovery is to be conducted. If the deponent is not involved in
30 the dispute, relief may be sought either in the foreign jurisdiction or in the superior
31 court in the county in which discovery is to be conducted.

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

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

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

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

4 **§ 2029.610. Fees and format of papers relating to discovery dispute**

5 2029.610. (a) On filing a petition under Section 2029.600, a petitioner who is a
6 party to the out-of-state proceeding shall pay a first appearance fee as specified in
7 Section 70611 of the Government Code. A petitioner who is not a party to the out-
8 of-state proceeding shall pay a motion fee as specified in subdivision (a) of
9 Section 70617 of the Government Code.

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

11 (c) On responding to a petition under Section 2029.600, a party to the out-of-
12 state proceeding shall pay a first appearance fee as specified in Section 70612 of
13 the Government Code. A person who is not a party to the out-of-state proceeding
14 may file a response without paying a fee.

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

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

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

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

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

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

28 **§ 2029.620. Subsequent discovery dispute in same case and county**

29 2029.620. (a) If a petition has been filed under Section 2029.600 and another
30 dispute later arises relating to discovery being conducted in the same county for
31 purposes of the same out-of-state proceeding, the deponent or a party to the
32 proceeding may file a petition for appropriate relief in the same superior court as
33 the previous petition.

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

36 (c) If the petitioner in the new dispute is not a party to the out-of-state case, or is
37 a party who previously paid a first appearance fee under this article, the petitioner
38 shall pay a motion fee as specified in subdivision (a) of Section 70617 of the
39 Government Code. If the petitioner in the new dispute is a party to the out-of-state
40 case but has not previously paid a first appearance fee under this article, the
41 petitioner shall pay a first appearance fee as specified in Section 70611 of the
42 Government Code.

1 (d) If a person responding to the new petition is not a party to the out-of-state
2 case, or is a party who previously paid a first appearance fee under this article, that
3 person does not have to pay a fee for responding. If a person responding to the
4 new petition is a party to the out-of-state case but has not previously paid a first
5 appearance fee under this article, that person shall pay a first appearance fee as
6 specified in Section 70612 of the Government Code.

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

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

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

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

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

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

24 Section 2029.620 does not apply when discovery disputes relate to the same out-of-state case
25 but arise in different counties. In that situation, each petition for relief must be filed in the
26 superior court of the county in which the deposition is being taken. See Sections 2029.600,
27 2029.600(a). In appropriate circumstances, a petition may be transferred and consolidated with a
28 petition pending in another county. See Sections 403 (transfer), 1048(a) (consolidation); see also
29 Gov't Code § 70618 (transfer fees). In determining whether to order a transfer, a court should
30 consider factors such as convenience of the deponent and similarity of issues.

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

34 **§ 2029.630. Hearing date and briefing schedule**

35 2029.630. A petition under Section 2029.600 or Section 2029.620 is subject to
36 the requirements of Section 1005 relating to notice and to filing and service of
37 papers.

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

41 **§ 2029.640. Discovery on notice or agreement**

42 2029.640. If a party to a proceeding pending in a foreign jurisdiction seeks
43 discovery from a witness in this state by properly issued notice or by agreement, it
44 is not necessary for that party to obtain a subpoena under this article to be able to
45 seek relief under Section 2029.600 or 2029.620. The deponent or any other party

1 may also seek relief under Section 2029.600 or 2029.620 in those circumstances,
2 regardless of whether the deponent was subpoenaed under this article.

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

7 **§ 2029.650. Writ petition**

8 2029.650. (a) If a superior court issues an order granting, denying, or otherwise
9 resolving a petition under Section 2029.600 or 2029.620, a party or deponent
10 aggrieved by the order may petition the appropriate court of appeal for an
11 extraordinary writ.

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

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

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

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

24 **§ 2029.700. Uniformity of application and construction [UIDDA § 7]**

25 2029.700. (a) Sections 2029.100, 2029.200, 2029.300, 2029.400, 2029.500,
26 2029.600, 2029.800, 2029.900, and this section, collectively, constitute and may
27 be referred to as the “California version of the Uniform Interstate Depositions and
28 Discovery Act.”

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

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

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

38 **§ 2029.800. Application to pending action [UIDDA § 8]**

39 2029.800. This article applies to requests for discovery in cases pending on or
40 after the operative date of this section.

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

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

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

17 **§ 2029.900. Operative date [UIDDA § 9]**

18 2029.900. Section 2029.390 is operative on January 1, 2009. The remainder of
19 this article is ... operative on January 1, 2010.

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

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

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

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

32 70626. (a) The fee for each of the following services is fifteen dollars (\$15).
33 Amounts collected shall be distributed to the Trial Court Trust Fund under Section
34 68085.1.

35 (1) Issuing a writ of attachment, a writ of mandate, a writ of execution, a writ of
36 sale, a writ of possession, a writ of prohibition, or any other writ for the
37 enforcement of any order or judgment.

38 (2) Issuing an abstract of judgment.

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

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

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

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

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

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

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

7 (1) Issuing an order of sale.

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

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

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

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

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

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

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

24 (9) Filing an affidavit under Section 13200 of the Probate Code, together with
25 the issuance of one certified copy of the affidavit under Section 13202 of the
26 Probate Code.

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

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

34 **Background from Uniform Act**

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

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