

ASSEMBLY BILL

No. 223

Introduced by Assembly Member Frommer

February 13, 2001

An act to amend Sections 2026 and 2033.5 of the Code of Civil Procedure, and to amend Section 915 of the Evidence Code, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 223, as introduced, Frommer. Evidence: depositions: forms: discovery.

Existing law provides that a party may obtain discovery by taking an oral deposition in another state of the United States, or in a territory or an insular possession subject to its jurisdiction. The deposition must be conducted under the supervision of a person authorized to administer oaths by the laws of the United States or before a person appointed by the court.

This bill would authorize the clerk of the court to issue a commission authorizing the deposition in another state or place. The commission would be issued to any party in any action pending in its venue without a noticed motion or court order. The commission would contain such terms as are required by the foreign jurisdiction to initiate the process. If a court order is required by the foreign jurisdiction, an order for a commission would be authorized to be obtained by an ex parte application.

Existing law requires the Judicial Council to develop and approve official form interrogatories and requests for admission of the genuineness of any relevant documents or of the truth of any relevant matters of fact in any civil action in a state court based on personal

injury, property damage, wrongful death, unlawful detainer, breach of contract, family law, or fraud.

This bill would instead authorize the Judicial Council to develop and approve official form interrogatories and requests for admission for use in any civil action in a state court.

Existing law generally provides that attorney work product is not discoverable unless the court determines the denial of discovery will unfairly prejudice the party seeking discovery, as specified. However, existing law also provides that any writing reflecting an attorney’s impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances. Existing law relating to the assertion of privilege provides that the presiding officer may not require disclosure of information claimed to be privileged in order to rule on the claim. However, if a court is unable to rule on the validity of the assertion of certain specified privileges without requiring disclosure, the court may require the disclosure of the information in chambers out of the presence and hearing of all persons except the person authorized to claim the protection and such other persons as the person authorized to claim the protection is willing to have present.

This bill would specify that a presiding officer may not require disclosure of attorney work product coming within the absolute prohibition in order to rule on a claim of privilege and would provide that other attorney work product may be disclosed pursuant to the above procedure in order to rule on such a claim.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2026 of the Code of Civil Procedure is
2 amended to read:
3 2026. (a) Any party may obtain discovery by taking an oral
4 deposition, as described in subdivision (a) of Section 2025, in
5 another state of the United States, or in a territory or an insular
6 possession subject to its jurisdiction. Except as modified in this
7 section, the procedures for taking oral depositions in California set
8 forth in Section 2025 apply to an oral deposition taken in another
9 state of the United States, or in a territory or an insular possession
10 subject to its jurisdiction.



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

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

17 (c) A deposition taken under this section shall be conducted (1)
18 under the supervision of a person who is authorized to administer
19 oaths by the laws of the United States or those of the place where
20 the examination is to be held, and who is not otherwise disqualified
21 under subdivision (k) and subparagraph (B) of paragraph (2) of
22 subdivision (l) of Section 2025, or (2) before a person appointed
23 by the court. This appointment is effective to authorize that person
24 to administer oaths and to take testimony. ~~When necessary or~~
25 ~~convenient~~ *On request, the clerk of the court shall issue a*
26 *commission on such terms and with such directions as are just and*
27 *appropriate authorizing the deposition in another state or place.*
28 *The commission shall request that process issue in the place where*
29 *the examination is to be held, requiring attendance and enforcing*
30 *the obligations of the deponents to produce documents and answer*
31 *questions. The commission shall be issued by the clerk to any party*
32 *in any action pending in its venue without a noticed motion or*
33 *court order. The commission may contain such terms as are*
34 *required by the foreign jurisdiction to initiate the process. If a court*
35 *order is required by the foreign jurisdiction, an order for a*
36 *commission may be obtained by ex parte application.*

37 SEC. 2. Section 2033.5 of the Code of Civil Procedure is
38 amended to read:

39 2033.5. (a) The Judicial Council ~~shall~~ *may* develop and
40 approve official form interrogatories and requests for admission of



1 the genuineness of any relevant documents or of the truth of any
2 relevant matters of fact *for use* in any civil action in a state court
3 ~~based on personal injury, property damage, wrongful death,~~
4 ~~unlawful detainer, breach of contract, family law, or fraud.~~ Use of
5 the approved form interrogatories and requests for admission shall
6 be optional.

7 (b) In developing the form interrogatories and requests for
8 admission required by this section, the Judicial Council shall
9 consult with a representative advisory committee which shall
10 include, but not be limited to, representatives of the plaintiff's bar,
11 the defense bar, the public interest bar, court administrators, and
12 the public. The form interrogatories and requests for admission
13 shall be drafted in nontechnical language and shall be made
14 available through the office of the clerk of the appropriate trial
15 court.

16 (c) The Judicial Council also shall promulgate any necessary
17 rules to govern the use of the form interrogatories and requests for
18 admission.

19 (d) The Judicial Council shall develop and approve official
20 form interrogatories for use by a victim who has not received
21 complete payment of a restitution order made pursuant to Section
22 1202.4 of the Penal Code.

23 (e) Notwithstanding whether a victim initiates or maintains an
24 action to satisfy the unpaid restitution order, a victim may
25 propound the form interrogatories approved pursuant to this
26 section once each calendar year. The defendant subject to the
27 restitution order shall, in responding to the interrogatories
28 propounded, provide current information regarding the nature,
29 extent, and location of any assets, income, and liabilities in which
30 the defendant claims a present or future interest.

31 (f) This section shall become operative on January 1, 2000.

32 SEC. 3. Section 915 of the Evidence Code is amended to read:

33 915. (a) Subject to subdivision (b), the presiding officer may
34 not require disclosure of information claimed to be privileged
35 under this division *or attorney work product under subdivision (c)*
36 *of Section 2018 of the Code of Civil Procedure* in order to rule on
37 the claim of privilege; provided, however, that in any hearing
38 conducted pursuant to subdivision (c) of Section 1524 of the Penal
39 Code in which a claim of privilege is made and the court
40 determines that there is no other feasible means to rule on the



1 validity of such claim other than to require disclosure, the court
2 shall proceed in accordance with subdivision (b).

3 (b) When a court is ruling on a claim of privilege under Article
4 9 (commencing with Section 1040) of Chapter 4 (official
5 information and identity of informer) or under Section 1060 (trade
6 secret) *or under subdivision (b) of Section 2018 of the Code of Civil*
7 *Procedure (attorney work product)* and is unable to do so without
8 requiring disclosure of the information claimed to be privileged,
9 the court may require the person from whom disclosure is sought
10 or the person authorized to claim the privilege, or both, to disclose
11 the information in chambers out of the presence and hearing of all
12 persons except the person authorized to claim the privilege and
13 such other persons as the person authorized to claim the privilege
14 is willing to have present. If the judge determines that the
15 information is privileged, neither he nor any other person may ever
16 disclose, without the consent of a person authorized to permit
17 disclosure, what was disclosed in the course of the proceedings in
18 chambers.

