

Assembly Bill No. 223

Passed the Assembly September 10, 2001

Chief Clerk of the Assembly

Passed the Senate September 4, 2001

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2001, at _____ o'clock __M.

Private Secretary of the Governor



CHAPTER _____

An act to amend Sections 425.10, 425.11, 489.220, 685.030, 720.160, 720.260, 877.6, 1013, 1134, 2017, 2025, 2026, 2033.5, and 2093 of the Code of Civil Procedure, to amend Section 915 of the Evidence Code, to amend Sections 68502.5, 68511.3, 71629, 72055, 77001, 77003, 77009, 77202, 77206, and 77212, and to repeal Section 68113 of, the Government Code, and to amend Section 1463.1 of the Penal Code, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

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

Existing law sets forth the required contents of a civil complaint or cross-complaint, the right of a defendant to request a statement of the nature and amount of damages sought, and the required amount of an undertaking to obtain a release of an attachment or a protective order, or to protect the rights of a 3rd-party creditor, with regard to a writ of execution on a debtor's property.

This bill would make technical changes in these provisions and increase the required amount of those undertakings, as specified.

Existing law authorizes the clerk of a court to enter in the Register of Actions a writ of execution on a money judgment as wholly satisfied when no more than \$10 interest deficit exists in a limited civil case, as specified.

This bill would extend that authorization to all civil cases involving money judgments.

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. The bill would also permit a person to take, or attend, a deposition by telephone or other electronic means, would permit a nonparty deponent to appear at his or her deposition by telephone, as specified, and would authorize the use of electronic technology in conducting discovery, as specified.

Existing law provides that certified shorthand reporters have the power to administer oaths or affirmations to those being deposed.

This bill would make that power applicable when the deposition is taken by telephone or other remote electronic means, as specified.

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 further require the Judicial Council to develop and approve official form interrogatories and requests for admission for use in any other civil action in a state court as the Judicial Council deems appropriate.

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.

Existing law requires each trial court to report to the Judicial Council on progress towards achieving specified cost reduction goals.

This bill would repeal that requirement.

Existing law specifies the total fee for filing a first paper in a limited civil case. Existing law authorizes the board of supervisors of each county to exclude a specified portion of the total fee relating to dispute resolution.

This bill would revise the total fee for filing a first paper in a limited civil case, as specified. The bill would delete the authority of a board of supervisors to exclude a portion of the total fee and instead permit the Judicial Council to authorize any trial court to exclude that portion of the fee.

Existing law provides that the Judicial Council shall establish by rule the Trial Court Budget Commission and may delegate certain budgetary activities and recommending authority to the Trial Court Budget Commission. Existing law also provides specific standards for the allocation of moneys to individual courts proposed by the commission for approval by the Judicial Council. Existing law requires that each trial court send a copy of its budget request to the board of supervisors, and provides that the board of supervisors may comment on the budget to the Trial Court Budget Commission.

This bill would remove the statutory authorization for the Trial Court Budget Commission, make corresponding changes, and delete the provision requiring the sending of a copy of a trial court budget request to the board of supervisors. This bill would also provide that the Judicial Council may seek input regarding budgetary activities as it deems appropriate, and expressly permit the consideration of other issues when making allocation determinations. This bill would repeal the statute requiring that each trial court send a copy of its budget request to the board of supervisors, and authorizing the board of supervisors to comment on the budget to the Trial Court Budget Commission.

Existing law provides generally for the state funding of trial courts. These provisions require the establishment of a decentralized system of trial court management, define court operations for funding purposes, require the board of supervisors



in each county to establish a Trial Court Operations Fund in the county treasury, provide for an annual appropriation to the Judicial Council for general operations of trial courts, require the Judicial Council to adopt appropriate rules for budget submission and management and the reporting of revenues and expenditures by each trial court, and require the continuation by counties of certain services to the courts.

This bill would revise the requirements for decentralized trial court management systems, revise the procedures for the audit and review of a Trial Court Operations Fund, revise the budget request procedures for the annual appropriation for trial court funding, and make corresponding changes in the definition of trial court operations.

Existing law provides that, with the prior approval of the county auditor, a municipal court may deposit into a bank account moneys that are deposited with the court as bail.

This bill would extend this provision to all trial courts, require prior approval of the administrative director of the courts rather than the county auditor, and provide for regulation of these accounts by the Judicial Council, as specified.

This bill would authorize the Judicial Council to restrict or prohibit a trial court from transferring money from one program to another, to audit the trial courts, to establish and control separate funds, and to regulate, control, and manage all moneys collected by the trial courts.

Existing law governs trial court employee benefits.

This bill would provide that, if a county administers benefits to trial court employees, the employee is eligible for benefits as regulations specify and the employee has the right to receive, and is similarly subject to the modifications of, the same level of benefits as county employees in similar classifications.

Existing law requires the Judicial Council to prepare a form, containing specific required information disclosures, by which litigants to an action may claim financial hardship and be excused from paying certain fees.

This bill would remove from the form the disclosure of the litigant's date of birth.

This bill would also require that any specified costs, charged to the courts by the counties, be expressly stated and contain only items of court operations.



This bill would require courts and counties to establish procedures to share budgetary information, as specified.

This bill would also require the Judicial Council to provide to the Legislature, on December 1, 2001, and yearly thereafter, court budget expenditure data, as specified.

Existing law provides for a confession of judgment without an action, upon the payment of a specified fee and the filing of specified documents, that becomes the judgment roll.

This bill would increase the filing fee for a confession of judgment in limited civil cases, and revise the list of required documents that become the judgment roll.

Existing law provides that a settling party in certain actions may give notice of settlement to all parties and the court and that, within 25 days of the mailing of that notice, a nonsettling party may file a notice of motion to contest the good faith of the settlement.

This bill would shorten the time limitation for the nonsettling party to file a motion contesting the good faith of the settlement to 20 days, if the original notice of settlement was personally served.

Existing law provides that service by mail is completed at the time of deposit and that the period of notice and any required response to the service, or any right or duty based thereon, is extended 5 days if mailed to a destination within California, 10 days if the destination is within the United States but outside California, and 20 days if the destination is outside the United States.

This bill would specify that the applicable days for this period of notice are calendar days, and that these time extensions shall be determined based upon either the destination or the place of mailing, or both, as specified.

This bill would incorporate additional changes in Section 2025 of the Code of Civil Procedure, proposed by SB 805, to be operative only if SB 805 and this bill are both chaptered and become effective on or before January 1, 2002, and this bill is chaptered last.

This bill would incorporate additional changes in Section 77003 of the Government Code, proposed by AB 1700, to be operative only if AB 1700 and this bill are both chaptered and become effective on or before January 1, 2002, and this bill is chaptered last.



This bill would incorporate additional changes in Section 77009 of the Government Code, proposed by SB 1191, to be operative only if SB 1191 and this bill are both chaptered and become effective on or before January 1, 2002, and this bill is chaptered last.

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

SECTION 1. Section 425.10 of the Code of Civil Procedure is amended to read:

425.10. (a) A complaint or cross-complaint shall contain both of the following:

(1) A statement of the facts constituting the cause of action, in ordinary and concise language.

(2) A demand for judgment for the relief to which the pleader claims to be entitled. If the recovery of money or damages is demanded, the amount demanded shall be stated.

(b) Notwithstanding subdivision (a), where an action is brought to recover actual or punitive damages for personal injury or wrongful death, the amount demanded shall not be stated, but the complaint shall comply with Section 422.30 and, in a limited civil case, with Section 72055 of the Government Code.

SEC. 2. Section 425.11 of the Code of Civil Procedure is amended to read:

425.11. (a) As used in this section:

(1) "Complaint" includes a cross-complaint.

(2) "Plaintiff" includes a cross-complainant.

(3) "Defendant" includes a cross-defendant.

(b) When a complaint is filed in an action to recover damages for personal injury or wrongful death, the defendant may at any time request a statement setting forth the nature and amount of damages being sought. The request shall be served upon the plaintiff, who shall serve a responsive statement as to the damages within 15 days. In the event that a response is not served, the defendant, on notice to the plaintiff, may petition the court in which the action is pending to order the plaintiff to serve a responsive statement.

(c) If no request is made for the statement referred to in subdivision (a), the plaintiff shall serve the statement on the defendant before a default may be taken.



(d) The statement referred to in subdivision (b) shall be served in the following manner:

(1) If a party has not appeared in the action, the statement shall be served in the same manner as a summons.

(2) If a party has appeared in the action, the statement shall be served upon the party's attorney, or upon the party if the party has appeared without an attorney, in the manner provided for service of a summons or in the manner provided by Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

(e) The statement referred to in subdivision (b) may be combined with the statement described in Section 425.115.

SEC. 3. Section 489.220 of the Code of Civil Procedure is amended to read:

489.220. (a) Except as provided in subdivision (b), the amount of an undertaking filed pursuant to this article shall be ten thousand dollars (\$10,000).

(b) If, upon objection to the undertaking, the court determines that the probable recovery for wrongful attachment exceeds the amount of the undertaking, it shall order the amount of the undertaking increased to the amount it determines to be the probable recovery for wrongful attachment if it is ultimately determined that the attachment was wrongful.

SEC. 4. Section 685.030 of the Code of Civil Procedure is amended to read:

685.030. (a) If a money judgment is satisfied in full pursuant to a writ under this title, interest ceases to accrue on the judgment:

(1) If the proceeds of collection are paid in a lump sum, on the date of levy.

(2) If the money judgment is satisfied pursuant to an earnings withholding order, on the date and in the manner provided in Section 706.024 or Section 706.028.

(3) In any other case, on the date the proceeds of sale or collection are actually received by the levying officer.

(b) If a money judgment is satisfied in full other than pursuant to a writ under this title, interest ceases to accrue on the date the judgment is satisfied in full.

(c) If a money judgment is partially satisfied pursuant to a writ under this title or is otherwise partially satisfied, interest ceases to accrue as to the part satisfied on the date the part is satisfied.



(d) For the purposes of subdivisions (b) and (c), the date a money judgment is satisfied in full or in part is the earliest of the following times:

(1) The date satisfaction is actually received by the judgment creditor.

(2) The date satisfaction is tendered to the judgment creditor or deposited in court for the judgment creditor.

(3) The date of any other performance that has the effect of satisfaction.

(e) The clerk of a court may enter in the Register of Actions a writ of execution on a money judgment as returned wholly satisfied when the judgment amount, as specified on the writ, is fully collected and only an interest deficit of no more than ten dollars (\$10) exists, due to automation of the continual daily interest accrual calculation.

SEC. 5. Section 720.160 of the Code of Civil Procedure is amended to read:

720.160. (a) If the creditor files with the levying officer an undertaking that satisfies the requirements of this section within the time allowed under subdivision (b) of Section 720.140:

(1) The levying officer shall execute the writ in the manner provided by law unless the third person files an undertaking to release the property pursuant to Chapter 6 (commencing with Section 720.610).

(2) After sale, payment, or delivery of the property pursuant to the writ, the property is free of all claims of the third person for which the creditor has given the undertaking.

(b) Subject to Sections 720.770 and 996.010, unless the creditor elects to file an undertaking in a larger amount, the amount of the undertaking filed by the creditor under this section shall be in the amount of ten thousand dollars (\$10,000), or twice the amount of the execution lien as of the date of levy or other enforcement lien as of the date it was created, whichever is the lesser amount.

(c) An undertaking given by the creditor under this chapter shall:

(1) Be made in favor of the third person.

(2) Indemnify the third person against any loss, liability, damages, costs, and attorney's fees, incurred by reason of the enforcement proceedings.



(3) Be conditioned on a final judgment that the third person owns or has the right of possession of the property.

(d) If the creditor is a public entity exempt from giving an undertaking, the public entity shall, in lieu of filing the undertaking, file with the levying officer a notice stating that the public entity opposes the claim of the third person. When so filed, the notice is deemed to satisfy the requirement of this section that an undertaking be filed.

SEC. 6. Section 720.260 of the Code of Civil Procedure is amended to read:

720.260. (a) If the creditor within the time allowed under subdivision (b) of Section 720.240 either files with the levying officer an undertaking that satisfies the requirements of this section and a statement that satisfies the requirements of Section 720.280 or makes a deposit with the levying officer of the amount claimed under Section 720.230:

(1) The levying officer shall execute the writ in the manner provided by law unless, in a case where the creditor has filed an undertaking, the secured party or lienholder files an undertaking to release the property pursuant to Chapter 6 (commencing with Section 720.610).

(2) After sale, payment, or delivery of the property pursuant to the writ, the property is free of all claims or liens of the secured party or lienholder for which the creditor has given the undertaking or made the deposit.

(b) Subject to Sections 720.770 and 996.010, unless the creditor elects to file an undertaking in a larger amount, the amount of the undertaking filed by the creditor under this section shall be in the amount of ten thousand dollars (\$10,000) or twice the amount of the execution lien as of the date of levy or other enforcement lien as of the date it was created, whichever is the lesser amount.

(c) An undertaking given by the creditor under this chapter shall:

(1) Be made in favor of the secured party or lienholder.

(2) Indemnify the secured party or lienholder against any loss, liability, damages, costs, and attorney's fees, incurred by reason of the enforcement proceedings.



(3) Be conditioned on a final judgment that the security interest or lien of the third person is entitled to priority over the creditor's lien.

(d) If the creditor is a public entity exempt from giving an undertaking, the public entity shall, in lieu of filing the undertaking, file with the levying officer a notice stating that the public entity opposes the claim of the third person. When so filed, the notice is deemed to satisfy the requirement of this section that an undertaking be filed.

SEC. 7. Section 877.6 of the Code of Civil Procedure is amended to read:

877.6. (a) (1) Any party to an action in which it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, upon giving notice in the manner provided in subdivision (b) of Section 1005. Upon a showing of good cause, the court may shorten the time for giving the required notice to permit the determination of the issue to be made before the commencement of the trial of the action, or before the verdict or judgment if settlement is made after the trial has commenced.

(2) In the alternative, a settling party may give notice of settlement to all parties and to the court, together with an application for determination of good faith settlement and a proposed order. The application shall indicate the settling parties, and the basis, terms, and amount of the settlement. The notice, application, and proposed order shall be given by certified mail, return receipt requested. Proof of service shall be filed with the court. Within 25 days of the mailing of the notice, application, and proposed order, or within 20 days of personal service, a nonsettling party may file a notice of motion to contest the good faith of the settlement. If none of the nonsettling parties files a motion within 25 days of mailing of the notice, application, and proposed order, or within 20 days of personal service, the court may approve the settlement. The notice by a nonsettling party shall be given in the manner provided in subdivision (b) of Section 1005. However, this paragraph shall not apply to settlements in which a confidentiality agreement has been entered into regarding the case or the terms of the settlement.



(b) The issue of the good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, and any counteraffidavits filed in response, or the court may, in its discretion, receive other evidence at the hearing.

(c) A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault.

(d) The party asserting the lack of good faith shall have the burden of proof on that issue.

(e) When a determination of the good faith or lack of good faith of a settlement is made, any party aggrieved by the determination may petition the proper court to review the determination by writ of mandate. The petition for writ of mandate shall be filed within 20 days after service of written notice of the determination, or within any additional time not exceeding 20 days as the trial court may allow.

(1) The court shall, within 30 days of the receipt of all materials to be filed by the parties, determine whether or not the court will hear the writ and notify the parties of its determination.

(2) If the court grants a hearing on the writ, the hearing shall be given special precedence over all other civil matters on the calendar of the court except those matters to which equal or greater precedence on the calendar is granted by law.

(3) The running of any period of time after which an action would be subject to dismissal pursuant to the applicable provisions of Chapter 1.5 (commencing with Section 583.110) of Title 8 of Part 2 shall be tolled during the period of review of a determination pursuant to this subdivision.

SEC. 8. Section 1013 of the Code of Civil Procedure is amended to read:

1013. (a) In case of service by mail, the notice or other paper shall be deposited in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making



service by mail; otherwise at that party's place of residence. The service is complete at the time of the deposit, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended five calendar days, upon service by mail, if the place of address and the place of mailing is within the State of California, 10 calendar days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 calendar days if either the place of mailing or the place of address is outside the United States, but the extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. This extension applies in the absence of a specific exception provided for by this section or other statute or rule of court.

(b) The copy of the notice or other paper served by mail pursuant to this chapter shall bear a notation of the date and place of mailing or be accompanied by an unsigned copy of the affidavit or certificate of mailing.

(c) In case of service by Express Mail, the notice or other paper must be deposited in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail, in a sealed envelope, with Express Mail postage paid, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service by Express Mail; otherwise at that party's place of residence. In case of service by another method of delivery providing for overnight delivery, the notice or other paper must be deposited in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service; otherwise at that party's place of residence. The service is complete at the time of the deposit, but any period of notice and any right or duty to do any



act or make any response within any period or on a date certain after the service of the document served by Express Mail or other method of delivery providing for overnight delivery shall be extended by two court days, but the extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. This extension applies in the absence of a specific exception provided for by this section or other statute or rule of court.

(d) The copy of the notice or other paper served by Express Mail or another means of delivery providing for overnight delivery pursuant to this chapter shall bear a notation of the date and place of deposit or be accompanied by an unsigned copy of the affidavit or certificate of deposit.

(e) Service by facsimile transmission shall be permitted only where the parties agree and a written confirmation of that agreement is made. The Judicial Council may adopt rules implementing the service of documents by facsimile transmission and may provide a form for the confirmation of the agreement required by this subdivision. In case of service by facsimile transmission, the notice or other paper must be transmitted to a facsimile machine maintained by the person on whom it is served at the facsimile machine telephone number as last given by that person on any document which he or she has filed in the cause and served on the party making the service. The service is complete at the time of transmission, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended, after service by facsimile transmission, by two court days, but the extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. This extension applies in the absence of a specific exception provided for by this section or other statute or rule of court.

(f) The copy of the notice or other paper served by facsimile transmission pursuant to this chapter shall bear a notation of the date and place of transmission and the facsimile telephone number to which transmitted or be accompanied by an unsigned copy of the affidavit or certificate of transmission which shall contain the



facsimile telephone number to which the notice or other paper was transmitted.

(g) Subdivisions (b), (d), and (f) are directory.

SEC. 9. Section 1134 of the Code of Civil Procedure is amended to read:

1134. (a) The statement required by Section 1133 shall be filed with the clerk of the court in which the judgment is to be entered, who must endorse upon it, and enter a judgment of the court for the amount confessed with the costs provided in subdivision (b).

(b) At the time of filing, the plaintiff shall pay as court costs that shall become a part of the judgment a fee of fifteen dollars (\$15). No fee shall be collected from the defendant. No fee shall be paid by the clerk of the court in which a confession of judgment is filed for the law library fund nor for services of any court reporter.

(c) The statement and affidavit, with the judgment endorsed thereon, together with the certificate filed pursuant to Section 1132, becomes the judgment roll.

SEC. 9.4. Section 2017 of the Code of Civil Procedure is amended to read:

2017. (a) Unless otherwise limited by order of the court in accordance with this article, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition, and location of any document, tangible thing, or land or other property.

(b) A party may obtain discovery of the existence and contents of any agreement under which any insurance carrier may be liable to satisfy in whole or in part a judgment that may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. This discovery may include the identity of the carrier and the nature and limits of the coverage. A party may also obtain discovery as to whether that insurance carrier is disputing



the agreement's coverage of the claim involved in the action, but not as to the nature and substance of that dispute. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial.

(c) The court shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. The court may make this determination pursuant to a motion for protective order by a party or other affected person. This motion shall be accompanied by a declaration stating facts showing a good faith attempt at an informal resolution of each issue presented by the motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(d) In any civil action alleging conduct that constitutes sexual harassment, sexual assault, or sexual battery, any party seeking discovery concerning the plaintiff's sexual conduct with individuals other than the alleged perpetrator is required to establish specific facts showing good cause for that discovery, and that the matter sought to be discovered is relevant to the subject matter of the action and reasonably calculated to lead to the discovery of admissible evidence. This showing shall be made by noticed motion and shall not be made or considered by the court at an ex parte hearing. This motion shall be accompanied by a declaration stating facts showing a good faith attempt at an informal resolution of each issue presented by the motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for discovery, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(e) (1) Pursuant to noticed motion, a court may enter orders for the use of technology in conducting discovery in cases designated as complex pursuant to Section 19 of the Judicial Administration Standards, cases ordered to be coordinated pursuant to Chapter 3 (commencing with Section 404) of Title 4 of Part 2, or exceptional



cases exempt from case disposition time goals pursuant to Article 5 (commencing with Section 68600) of Chapter 2 of Title 8 of the Government Code, or cases assigned to Plan 3 pursuant to paragraph (3) of subdivision (b) of Section 2105 of the California Rules of Court. In other cases, the parties may stipulate to the entry of orders for the use of technology in conducting discovery.

(2) An order authorizing that discovery may be made only upon the express findings of the court or stipulation of the parties that the procedures adopted in the order meet all of the following criteria:

(A) They promote cost-effective and efficient discovery or motions relating thereto.

(B) They do not impose or require undue expenditures of time or money.

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

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

(E) They do not require parties or counsel to purchase exceptional or unnecessary services, hardware, or software.

(3) Pursuant to these orders, discovery may be conducted and maintained in electronic media and by electronic communication. The court may enter orders prescribing procedures relating to the use of electronic technology in conducting discovery, including orders for the service of requests for discovery and responses, service and presentation of motions, production, storage, and access to information in electronic form, and the conduct of discovery in electronic media. The Judicial Council may promulgate rules, standards, and guidelines relating to electronic discovery and the use of such discovery data and documents in court proceedings.

(4) Nothing in this subdivision shall diminish the rights and duties of the parties regarding discovery, privileges, procedural rights, or substantive law.

(5) If a service provider is to be used and compensated by the parties, the court shall appoint the person or organization agreed upon by the parties and approve the contract agreed upon by the parties and the service provider. If the parties do not agree on the selection, each party shall submit to the court up to three nominees



for appointment together with a contract acceptable to the nominee and the court shall appoint a service provider from among the nominees. The court may condition this appointment on the acceptance of modifications in the terms of the contract. If no nominations are received from any of the parties, the court shall appoint one or more service providers. Pursuant to noticed motion at any time and upon a showing of good cause, the court may order the removal of the service provider or vacate any agreement between the parties and the service provider, or both, effective as of the date of the order. The continued service of the service provider shall be subject to review periodically, as agreed by the parties and the service provider, or annually if they do not agree. Any disputes involving the contract or the duties, rights, and obligations of the parties or service providers may be determined on noticed motion in the action.

(6) Subject to these findings and the purpose of permitting and encouraging cost-effective and efficient discovery, “technology,” as used in this section, includes, but is not limited to, telephone, e-mail, CD-ROM, Internet web sites, electronic documents, electronic document depositories, Internet depositions and storage, videoconferencing, and other electronic technology that may be used to improve communication and the discovery process.

(7) Nothing in this subdivision shall be construed to modify the requirement for use of a stenographic court reporter as provided in paragraph (1) of subdivision (l) of Section 2025. The rules, standards, and guidelines adopted pursuant to this subdivision shall be consistent with the requirement of paragraph (1) of subdivision (l) of Section 2025 that deposition testimony be taken stenographically unless the parties agree or the court orders otherwise.

(8) Nothing in this subdivision shall be construed to modify or affect in any way the process used for the selection of a stenographic court reporter.

SEC. 9.6. Section 2025 of the Code of Civil Procedure is amended to read:

2025. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by taking in California the oral deposition of any person, including any party to the action. The person deposed may



be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

(b) Subject to subdivisions (f) and (t), an oral deposition may be taken as follows:

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

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

(c) A party desiring to take the oral deposition of any person shall give notice in writing in the manner set forth in subdivision (d). However, where under subdivision (d) of Section 2020 only the production by a nonparty of business records for copying is desired, a copy of the deposition subpoena shall serve as the notice of deposition. The notice of deposition shall be given to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of privacy rights specified in subdivision (e) of Section 1985.3 and in Section 1985.6, and (3) a copy of the deposition subpoena.

(d) The deposition notice shall state all of the following:

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

(2) The date of the deposition, selected under subdivision (f), and the time it will commence.

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



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

(5) Any intention to record the testimony by audiotape or videotape, in addition to recording the testimony by the stenographic method as required by paragraph (1) of subdivision (l) and any intention to record the testimony by stenographic method, through the instant visual display of the testimony. In the latter event, a copy of the deposition notice shall also be given to the deposition officer. Any offer to provide the instant visual display of the testimony or to provide rough draft transcripts to any party which is accepted prior to, or offered at, the deposition shall also be made by the deposition officer at the deposition to all parties in attendance.

(6) Any intention to reserve the right to use at trial a videotape deposition of a treating or consulting physician or of any expert witness under paragraph (4) of subdivision (u). In this event, the operator of the videotape camera shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties.

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent. A deposition subpoena shall advise a nonparty deponent of its duty to make this designation, and shall describe with reasonable particularity the matters on which examination is requested.

If the attendance of the deponent is to be compelled by service of a deposition subpoena under Section 2020, an identical copy of that subpoena shall be served with the deposition notice.

(e) (1) The deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence, unless the court orders otherwise under paragraph (3).



(2) The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal executive or business office in California, or within the county where the action is pending and within 150 miles of that office. The deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in California, unless the organization consents to a more distant place. If the organization has not designated a principal executive or business office in California, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office in California of the organization.

(3) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a motion for an order that the deponent attend for deposition at a place that is more distant than that permitted under paragraph (1). This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion.

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

(A) Whether the moving party selected the forum.

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

(C) The convenience of the deponent.

(D) The feasibility of conducting the deposition by written questions under Section 2028, or of using a discovery method other than a deposition.

(E) The number of depositions sought to be taken at a place more distant than that permitted under paragraph (1).

(F) The expense to the parties of requiring the deposition to be taken within the distance permitted under paragraph (1).

(G) The whereabouts of the deponent at the time for which the deposition is scheduled.



The order may be conditioned on the advancement by the moving party of the reasonable expenses and costs to the deponent for travel to the place of deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to increase travel limits for party deponent, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena. However, in unlawful detainer actions, an oral deposition shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial.

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

(g) Any party served with a deposition notice that does not comply with subdivisions (b) to (f), inclusive, waives any error or irregularity unless that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served. If an objection is made three calendar days before the deposition date, the objecting party shall make personal service of that objection pursuant to Section 1011 on the party who gave notice of the deposition. Any deposition taken after the service of a written objection shall not be used against the objecting party under subdivision (u) if the party did not attend the deposition and if the court determines that the objection was a valid one.

In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and



quashing the deposition notice. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. The taking of the deposition is stayed pending the determination of this motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(h) (1) The service of a deposition notice under subdivision (c) is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.

(2) The attendance and testimony of any other deponent, as well as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Section 2020.

(3) A person may take, and any person other than the deponent may attend, a deposition by telephone or other remote electronic means. The court may expressly provide that a nonparty deponent may appear at his or her deposition by telephone if it finds there is good cause and no prejudice to any party. A party deponent must appear at his or her deposition in person and be in the presence of the deposition officer. The procedures to implement this section shall be established by court order in the specific action proceeding or by the California Rules of Court.

(i) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This



protective order may include, but is not limited to, one or more of the following directions:

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

If the motion for a protective order is denied in whole or in part, the court may order that the deponent provide or permit the



discovery against which protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) (1) If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If a deponent does not appear for a deposition because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, in favor of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent on whom a deposition subpoena has been served fails to attend a deposition or refuses to be sworn as a witness, the court may impose on the deponent the sanctions described in subdivision (h) of Section 2020.

(3) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under subdivision (d), without having served a valid objection under subdivision (g), fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice. This motion (A) shall set forth specific facts showing good cause justifying the



production for inspection of any document or tangible thing described in the deposition notice, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by it or, when the deponent fails to attend the deposition and produce the documents or things described in the deposition notice, by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance. If this motion is granted, the court shall also impose a monetary sanction under Section 2023 against the deponent or the party with whom the deponent is affiliated, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. On motion of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, the court shall also impose a monetary sanction under Section 2023, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023 against that party deponent or against the party with whom the deponent is affiliated. In lieu of, or in addition to, this sanction, the court may impose a monetary sanction under Section 2023 against that deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order.

(k) Except as provided in paragraph (3) of subdivision (d) of Section 2020, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath and is subject to all of the following requirements:

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

(2) Services and products offered or provided by the deposition officer or the entity providing the services of the deposition officer to any party or to any party's attorney or third party who is



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

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

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

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

(1) (1) The deposition officer shall put the deponent under oath. Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically. The party noticing the deposition may also record the testimony by audiotape or videotape if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the parties agree that the testimony may also be recorded by either of those methods. Any other party, at



that party's expense, may make a simultaneous audiotape or videotape record of the deposition, provided that other party promptly, and in no event less than three calendar days before the date for which the deposition is scheduled, serves a written notice of this intention to audiotape or videotape the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served under subdivision (c), and on any deponent whose attendance is being compelled by a deposition subpoena under Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011. Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.

(2) If the deposition is being recorded by means of audiotape or videotape, the following procedure shall be observed:

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

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a videotape of deposition testimony is to be used under paragraph (4) of subdivision (u), the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions. Services and products offered or provided by the deposition officer or the entity providing the services of the deposition officer to any party or to any party's attorney or third party who is financing all or part of the action shall be offered or provided to all parties or their attorneys attending the deposition. No service or product may be offered or provided by the deposition officer or by the entity providing the services of the deposition officer to any party or any party's attorney or third party who is financing all or part of the action unless the service or product is offered or provided to all parties or their attorneys attending the deposition. All services and products offered or provided shall be made available at the same time to all parties or their attorneys. The deposition officer or the



entity providing the services of the deposition officer shall not provide to any party or any other person or entity any service or product consisting of the deposition officer's notations or comments regarding the demeanor of any witness, attorney, or party present at the deposition. The deposition officer or the entity providing the services of the deposition officer shall not collect any personal identifying information about the witness as a service or product to be provided to any party or third party who is financing all or part of the action. Upon the request of any party or any party's attorney attending a deposition, any party or any party's attorney attending the deposition shall enter in the record of the deposition all services and products made available to that party or party's attorney or third party who is financing all or part of the action by the deposition officer or by the entity providing the services of the deposition officer. A party in the action who is not represented by an attorney shall be informed by the noticing party that the unrepresented party may request this statement.

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

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

(E) Counsel for the parties shall identify themselves on camera or on the audiotape.

(F) The oath shall be administered to the deponent on camera or on the audiotape.

(G) If the length of a deposition requires the use of more than one unit of tape, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audiotape.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audiotape that the deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audiotape or videotape recording and the exhibits, or concerning other pertinent matters.



(I) A party intending to offer an audiotaped or videotaped recording of a deposition in evidence under subdivision (u) shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the tape. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audiotaped or videotaped deposition that are not designated by any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition tape be prepared for use at the trial or hearing. The original audiotape or videotape of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering a videotape or an audiotape recording of that testimony under subdivision (u) shall accompany that offer with a stenographic transcript prepared from that recording.

(3) In lieu of participating in the oral examination, parties may transmit written questions in a sealed envelope to the party taking the deposition for delivery to the deposition officer, who shall unseal the envelope and propound them to the deponent after the oral examination has been completed.

(m) (1) The protection of information from discovery on the ground that it is privileged or that it is a protected work product under Section 2018 is waived unless a specific objection to its disclosure is timely made during the deposition.

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



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

(4) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking that answer or production may adjourn the deposition or complete the examination on other matters without waiving the right at a later time to move for an order compelling that answer or production under subdivision (o).

(n) The deposition officer shall not suspend the taking of testimony without stipulation of the party conducting the deposition and the deponent unless any party attending the deposition or the deponent demands the taking of testimony be suspended to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court, for good cause shown, may terminate the examination or may limit the scope and manner of taking the deposition as provided in subdivision (i). If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal



resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is recorded by audiotape or videotape, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion. If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent fails to obey an order entered under this subdivision, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of, or in addition to, this sanction, the court may impose a monetary sanction under Section 2023 against that party deponent or against any party with whom the deponent is affiliated.

(p) Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. The party noticing the deposition shall bear the cost of that transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party. Notwithstanding paragraph (2) of subdivision (k), any other party, at that party's expense, may obtain a copy of the transcript. If the deposition officer receives a request from a party for an original



or a copy of the deposition transcript, or any portion thereof, and the document will be available to that party prior to the time the original or copy would be available to any other party, the deposition officer shall immediately notify all other parties attending the deposition of the request, and shall, upon request by any party other than the party making the original request, make that copy of the full or partial deposition transcript available to all parties at the same time. Stenographic notes of depositions shall be retained by the reporter for a period of not less than eight years from the date of the deposition, where no transcript is produced, and not less than one year from the date on which the transcript is produced. Those notes may be either on paper or electronic media, as long as it allows for satisfactory production of a transcript at any time during the periods specified. At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audiotape or videotape shall promptly (1) permit that other party to hear the audiotape or to view the videotape, and (2) furnish a copy of the audiotape or videotape to that other party on receipt of payment of the reasonable cost of making that copy of the tape.

If the testimony at the deposition is recorded both stenographically, and by audiotape or videotape, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

(q) (1) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony for each session of the deposition is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record that the reading, correcting, and signing of the transcript of the testimony will be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time. For 30 days following each notice, unless the attending parties and the deponent agree on the record or otherwise in writing to a longer or shorter time period, the deponent may change the form or the substance of the answer to a question, and may either approve the



transcript of the deposition by signing it, or refuse to approve the transcript by not signing it.

Alternatively, within this same period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition. For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

The deposition officer shall indicate on the original of the transcript, if the deponent has not already done so at the office of the deposition officer, any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person. If the deponent fails or refuses to approve the transcript within the allotted period, the deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If there is no stenographic transcription of the deposition, the deposition officer shall send written notice to the deponent and to all parties attending the deposition that the recording is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of an audiotape or videotape recording of the testimony. For 30 days following this



notice the deponent, either in person or by signed letter to the deposition officer, may change the substance of the answer to any question.

The deposition officer shall set forth in a writing to accompany the recording any changes made by the deponent, as well as either the deponent's signature identifying the deposition as his or her own, or a statement of the deponent's failure to supply the signature, or to contact the officer within the allotted period. When a deponent fails to contact the officer within the allotted period, or expressly refuses by a signature to identify the deposition as his or her own, the deposition shall be given the same effect as though signed. However, on a reasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(r) (1) The deposition officer shall certify on the transcript of the deposition, or in a writing accompanying an audiotaped or videotaped deposition as described in paragraph (2) of subdivision (q), that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given.

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

(s) (1) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that transcript in an envelope or package endorsed with the title of the action and marked: "Deposition of (here insert name of deponent)," and shall promptly transmit it to the attorney for the



party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

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

(2) An audiotape or videotape record of deposition testimony, including a certified tape made by an operator qualified under subparagraph (B) of paragraph (2) of subdivision (I), shall not be filed with the court. Instead, the operator shall retain custody of that record and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the tape and the integrity of the testimony and images it contains.

At the request of any party to the action, including a party who did not attend the taking of the deposition testimony, or at the request of the deponent, that operator shall promptly (A) permit the one making the request to hear or to view the tape on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the tape, and (B) furnish a copy of the audiotape or the videotape recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the tape.

The attorney or operator who has custody of an audiotape or videotape record of deposition testimony shall retain custody of it until six months after final disposition of the action. At that time, the audiotape or videotape may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the tape be preserved for a longer period.

(t) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who has been served with a deposition notice pursuant to subdivision (c) may take a subsequent deposition of that deponent. However, for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken. This subdivision does not preclude taking one subsequent deposition of a natural



person who has previously been examined (1) as a result of that person's designation to testify on behalf of an organization under subdivision (d), or (2), pursuant to a court order under Section 485.230, for the limited purpose of discovering pursuant to Section 485.230 the identity, location, and value of property in which the deponent has an interest. This subdivision does not authorize the taking of more than one subsequent deposition for the limited purpose of Section 485.230.

(u) At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under subdivision (g), so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:

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

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

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

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

(B) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is (i) exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant, (ii) disqualified from testifying, (iii) dead or unable to attend or testify because of existing physical or mental illness or infirmity, (iv) absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process, or (v) absent from the trial or other hearing and the proponent of the deposition has exercised



reasonable diligence but has been unable to procure the deponent's attendance by the court's process.

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

(4) Any party may use a videotape deposition of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under subdivision (d) reserved the right to use the deposition at trial, and if that party has complied with subparagraph (I) of paragraph (2) of subdivision (l).

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

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

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

(v) Violation of subdivision (k) by any person may result in a civil penalty of up to five thousand dollars (\$5,000) imposed by a court of competent jurisdiction.

SEC. 9.7. Section 2025 of the Code of Civil Procedure is amended to read:

2025. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

(b) Subject to subdivisions (f) and (t), an oral deposition may be taken as follows:



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

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

(c) A party desiring to take the oral deposition of any person shall give notice in writing in the manner set forth in subdivision (d). However, where under subdivision (d) of Section 2020 only the production by a nonparty of business records for copying is desired, a copy of the deposition subpoena shall serve as the notice of deposition. The notice of deposition shall be given to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of privacy rights specified in subdivision (e) of Section 1985.3 and in Section 1985.6, and (3) a copy of the deposition subpoena.

(d) The deposition notice shall state all of the following:

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

(2) The date of the deposition, selected under subdivision (f), and the time it will commence.

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

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

(5) Any intention to record the testimony by audiotape or videotape, in addition to recording the testimony by the stenographic method as required by paragraph (1) of subdivision (1) and any intention to record the testimony by stenographic



method, through the instant visual display of the testimony. In the latter event, a copy of the deposition notice shall also be given to the deposition officer. Any offer to provide the instant visual display of the testimony or to provide rough draft transcripts to any party which is accepted prior to, or offered at, the deposition shall also be made by the deposition officer at the deposition to all parties in attendance.

(6) Any intention to reserve the right to use at trial a videotape deposition of a treating or consulting physician or of any expert witness under paragraph (4) of subdivision (u). In this event, the operator of the videotape camera shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties.

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent. A deposition subpoena shall advise a nonparty deponent of its duty to make this designation, and shall describe with reasonable particularity the matters on which examination is requested.

If the attendance of the deponent is to be compelled by service of a deposition subpoena under Section 2020, an identical copy of that subpoena shall be served with the deposition notice.

(e) (1) The deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence, unless the court orders otherwise under paragraph (3).

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



or business office in California, unless the organization consents to a more distant place. If the organization has not designated a principal executive or business office in California, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office in California of the organization.

(3) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a motion for an order that the deponent attend for deposition at a place that is more distant than that permitted under paragraph (1). This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion.

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

(A) Whether the moving party selected the forum.

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

(C) The convenience of the deponent.

(D) The feasibility of conducting the deposition by written questions under Section 2028, or of using a discovery method other than a deposition.

(E) The number of depositions sought to be taken at a place more distant than that permitted under paragraph (1).

(F) The expense to the parties of requiring the deposition to be taken within the distance permitted under paragraph (1).

(G) The whereabouts of the deponent at the time for which the deposition is scheduled.

The order may be conditioned on the advancement by the moving party of the reasonable expenses and costs to the deponent for travel to the place of deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to increase travel limits for party deponent, unless it finds that the one subject to the sanction acted with



substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena. However, in unlawful detainer actions, an oral deposition shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial.

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

(g) Any party served with a deposition notice that does not comply with subdivisions (b) to (f), inclusive, waives any error or irregularity unless that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served. If an objection is made three calendar days before the deposition date, the objecting party shall make personal service of that objection pursuant to Section 1011 on the party who gave notice of the deposition. Any deposition taken after the service of a written objection shall not be used against the objecting party under subdivision (u) if the party did not attend the deposition and if the court determines that the objection was a valid one.

In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and quashing the deposition notice. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. The taking of the deposition is stayed pending the determination of this motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes



or opposes a motion to quash a deposition notice, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(h) (1) The service of a deposition notice under subdivision (c) is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.

(2) The attendance and testimony of any other deponent, as well as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Section 2020.

(3) A person may take, and any person other than the deponent may attend, a deposition by telephone or other remote electronic means. The court may expressly provide that a nonparty deponent may appear at his or her deposition by telephone if it finds there is good cause and no prejudice to any party. A party deponent must appear at his or her deposition in person and be in the presence of the deposition officer. The procedures to implement this section shall be established by court order in the specific action proceeding or by the California Rules of Court.

(i) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

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

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

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

(3) That a videotape deposition of a treating or consulting physician or of any expert witness, intended for possible use at trial under paragraph (4) of subdivision (u), be postponed until the moving party has had an adequate opportunity to prepare, by



discovery deposition of the deponent, or other means, for cross-examination.

(4) That the deposition be taken at a place other than that specified in the deposition notice, if it is within a distance permitted by subdivision (e).

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

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

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

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

(9) That certain matters not be inquired into.

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

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

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

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

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

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

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

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.



(j) (1) If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If a deponent does not appear for a deposition because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, in favor of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent on whom a deposition subpoena has been served fails to attend a deposition or refuses to be sworn as a witness, the court may impose on the deponent the sanctions described in subdivision (h) of Section 2020.

(3) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under subdivision (d), without having served a valid objection under subdivision (g), fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice. This motion (A) shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by it or, when the deponent fails to attend the deposition and produce the documents or things described in the deposition notice, by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance. If this motion is granted, the



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

If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023 against that party deponent or against the party with whom the deponent is affiliated. In lieu of, or in addition to, this sanction, the court may impose a monetary sanction under Section 2023 against that deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order.

(k) Except as provided in paragraph (3) of subdivision (d) of Section 2020, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath and is subject to all of the following requirements:

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

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



products offered or provided shall be made available at the same time to all parties or their attorneys.

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

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

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

(l) (1) The deposition officer shall put the deponent under oath. Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically. The party noticing the deposition may also record the testimony by audiotape or videotape if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make a simultaneous audiotape or videotape record of the deposition, provided that other party promptly, and in no event less than three calendar days before the date for which the deposition is scheduled, serves a written notice of this intention to audiotape or videotape the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served



under subdivision (c), and on any deponent whose attendance is being compelled by a deposition subpoena under Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011. Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.

(2) If the deposition is being recorded by means of audiotape or videotape, the following procedure shall be observed:

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

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a videotape of deposition testimony is to be used under paragraph (4) of subdivision (u), the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions. Services and products offered or provided by the deposition officer or the entity providing the services of the deposition officer to any party or to any party's attorney or third party who is financing all or part of the action shall be offered or provided to all parties or their attorneys attending the deposition. No service or product may be offered or provided by the deposition officer or by the entity providing the services of the deposition officer to any party or any party's attorney or third party who is financing all or part of the action unless the service or product is offered or provided to all parties or their attorneys attending the deposition. All services and products offered or provided shall be made available at the same time to all parties or their attorneys. The deposition officer or the entity providing the services of the deposition officer shall not provide to any party or any other person or entity any service or product consisting of the deposition officer's notations or comments regarding the demeanor of any witness, attorney, or party present at the deposition. The deposition officer or the entity providing the services of the deposition officer shall not collect any personal identifying information about the witness as a service



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

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

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

(E) Counsel for the parties shall identify themselves on camera or on the audiotape.

(F) The oath shall be administered to the deponent on camera or on the audiotape.

(G) If the length of a deposition requires the use of more than one unit of tape, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audiotape.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audiotape that the deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audiotape or videotape recording and the exhibits, or concerning other pertinent matters.

(I) A party intending to offer an audiotaped or videotaped recording of a deposition in evidence under subdivision (u) shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the tape. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and



objections as justice may require. With respect to those portions of an audiotaped or videotaped deposition that are not designated by any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition tape be prepared for use at the trial or hearing. The original audiotape or videotape of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering a videotape or an audiotape recording of that testimony under subdivision (u) shall accompany that offer with a stenographic transcript prepared from that recording.

(3) In lieu of participating in the oral examination, parties may transmit written questions in a sealed envelope to the party taking the deposition for delivery to the deposition officer, who shall unseal the envelope and propound them to the deponent after the oral examination has been completed.

(m) (1) The protection of information from discovery on the ground that it is privileged or that it is a protected work product under Section 2018 is waived unless a specific objection to its disclosure is timely made during the deposition.

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

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

(4) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking that answer or production may adjourn the



deposition or complete the examination on other matters without waiving the right at a later time to move for an order compelling that answer or production under subdivision (o).

(n) The deposition officer shall not suspend the taking of testimony without stipulation of the party conducting the deposition and the deponent unless any party attending the deposition or the deponent demands the taking of testimony be suspended to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court, for good cause shown, may terminate the examination or may limit the scope and manner of taking the deposition as provided in subdivision (i). If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the



deposition that are relevant to the motion. If a deposition is recorded by audiotape or videotape, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion. If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent fails to obey an order entered under this subdivision, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of, or in addition to, this sanction, the court may impose a monetary sanction under Section 2023 against that party deponent or against any party with whom the deponent is affiliated.

(p) Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. The party noticing the deposition shall bear the cost of that transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party. Notwithstanding paragraph (2) of subdivision (k), any other party, at that party's expense, may obtain a copy of the transcript. If the deposition officer receives a request from a party for an original or a copy of the deposition transcript, or any portion thereof, and the document will be available to that party prior to the time the original or copy would be available to any other party, the deposition officer shall immediately notify all other parties attending the deposition of the request, and shall, upon request by any party other than the party making the original request, make that copy of the full or partial deposition transcript available to all parties at the same time. Stenographic notes of depositions shall



be retained by the reporter for a period of not less than eight years from the date of the deposition, where no transcript is produced, and not less than one year from the date on which the transcript is produced. Those notes may be either on paper or electronic media, as long as it allows for satisfactory production of a transcript at any time during the periods specified. At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audiotape or videotape shall promptly (1) permit that other party to hear the audiotape or to view the videotape, and (2) furnish a copy of the audiotape or videotape to that other party on receipt of payment of the reasonable cost of making that copy of the tape.

A deposition officer shall not be considered a party or a party to an action for the purposes of this section. Any nonstenographic technology, used during a deposition at the discretion of the deposition officer for his or her convenience in creating a deposition transcript, and all data recorded by means of this technology, shall be the exclusive property of the deposition officer and shall not be regarded as part of a deposition transcript. Any video or audio recording of a deposition made by means of nonstenographic technology at the discretion of, and for the convenience of, a deposition officer shall not be considered an audiotape or videotape required to be maintained by a deposition officer, nor shall it be considered an audiotape or videotape made by a party to the action.

If the testimony at the deposition is recorded both stenographically and by audiotape or videotape, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

A videotape or audiotape recording, or any other recording made using nonstenographic technology, made or used by a deposition officer at his or her own discretion to assist in the creation of a deposition transcript, may not be reproduced and may not be used for any purpose other than to facilitate the deposition officer in creating the deposition transcript. The nonstenographic recording shall be destroyed or erased upon completion of the official transcript unless otherwise required by law or court order. If a nonstenographic recording is not destroyed or erased upon



completion of the official transcript, it shall be kept as provided in Section 69955 of the Government Code.

(q) (1) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony for each session of the deposition is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record that the reading, correcting, and signing of the transcript of the testimony will be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time. For 30 days following receipt of the written notice, unless the attending parties and the deponent agree on the record or otherwise in writing to a longer or shorter time period, the deponent may change the form or the substance of the answer to a question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it.

Alternatively, within this same period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition. For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

The deposition officer shall indicate on the original of the transcript, if the deponent has not already done so at the office of the deposition officer, any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person. If the deponent fails or refuses to approve the transcript within the allotted period, the deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal



resolution of each issue presented by the motion, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If there is no stenographic transcription of the deposition, the deposition officer shall send written notice to the deponent and to all parties attending the deposition that the recording is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of an audiotape or videotape recording of the testimony. For 30 days following this notice the deponent, either in person or by signed letter to the deposition officer, may change the substance of the answer to any question.

The deposition officer shall set forth in a writing to accompany the recording any changes made by the deponent, as well as either the deponent's signature identifying the deposition as his or her own, or a statement of the deponent's failure to supply the signature, or to contact the officer within the allotted period. When a deponent fails to contact the officer within the allotted period, or expressly refuses by a signature to identify the deposition as his or her own, the deposition shall be given the same effect as though signed. However, on a reasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.



(r) (1) The deposition officer shall certify on the transcript of the deposition, or in a writing accompanying an audiotaped or videotaped deposition as described in paragraph (2) of subdivision (q), that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given.

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

(s) (1) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that transcript in an envelope or package endorsed with the title of the action and marked: “Deposition of (here insert name of deponent),” and shall promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

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

(2) An audiotape or videotape record of deposition testimony, including a certified tape made by an operator qualified under subparagraph (B) of paragraph (2) of subdivision (l), shall not be filed with the court. Instead, the operator shall retain custody of that record and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the tape and the integrity of the testimony and images it contains.

At the request of any party to the action, including a party who did not attend the taking of the deposition testimony, or at the request of the deponent, that operator shall promptly (A) permit the one making the request to hear or to view the tape on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the tape, and (B) furnish a copy of the audiotape



or videotape recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the tape.

The attorney or operator who has custody of an audiotape or videotape record of deposition testimony shall retain custody of it until six months after final disposition of the action. At that time, the audiotape or videotape may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the tape be preserved for a longer period.

(t) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who has been served with a deposition notice pursuant to subdivision (c) may take a subsequent deposition of that deponent. However, for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken. This subdivision does not preclude taking one subsequent deposition of a natural person who has previously been examined (1) as a result of that person's designation to testify on behalf of an organization under subdivision (d), or (2), pursuant to a court order under Section 485.230, for the limited purpose of discovering pursuant to Section 485.230 the identity, location, and value of property in which the deponent has an interest. This subdivision does not authorize the taking of more than one subsequent deposition for the limited purpose of Section 485.230.

(u) At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under subdivision (g), so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:

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

(2) An adverse party may use for any purpose, a deposition of a party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under subdivision (d) of a party. It is not ground for objection to the use of a deposition of a party under this



paragraph by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.

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

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

(B) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is (i) exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant, (ii) disqualified from testifying, (iii) dead or unable to attend or testify because of existing physical or mental illness or infirmity, (iv) absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process, or (v) absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but has been unable to procure the deponent's attendance by the court's process.

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

(4) Any party may use a videotape deposition of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under subdivision (d) reserved the right to use the deposition at trial, and if that party has complied with subparagraph (I) of paragraph (2) of subdivision (l).

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

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

(7) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in



the subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the Evidence Code.

(v) Violation of subdivision (k) by any person may result in a civil penalty of up to five thousand dollars (\$5,000) imposed by a court of competent jurisdiction.

SEC. 10. Section 2026 of the Code of Civil Procedure is amended to read:

2026. (a) Any party may obtain discovery by taking an oral deposition, as described in subdivision (a) of Section 2025, in another state of the United States, or in a territory or an insular possession subject to its jurisdiction. Except as modified in this section, the procedures for taking oral depositions in California set forth in Section 2025 apply to an oral deposition taken in another state of the United States, or in a territory or an insular possession subject to its jurisdiction.

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

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

(c) A deposition taken under this section shall be conducted (1) under the supervision of a person who is authorized to administer oaths by the laws of the United States or those of the place where the examination is to be held, and who is not otherwise disqualified under subdivision (k) and subparagraph (B) of paragraph (2) of subdivision (l) of Section 2025, or (2) before a person appointed by the court. This appointment is effective to authorize that person to administer oaths and to take testimony. On request, the clerk of



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

SEC. 11. Section 2033.5 of the Code of Civil Procedure is amended to read:

2033.5. (a) The Judicial Council shall 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 for use 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 and for any other civil actions the Judicial Council deems appropriate. Use of the approved form interrogatories and requests for admission shall be optional.

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

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

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

(e) Notwithstanding whether a victim initiates or maintains an action to satisfy the unpaid restitution order, a victim may



propound the form interrogatories approved pursuant to this section once each calendar year. The defendant subject to the restitution order shall, in responding to the interrogatories propounded, provide current information regarding the nature, extent, and location of any assets, income, and liabilities in which the defendant claims a present or future interest.

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

SEC. 12. Section 2093 of the Code of Civil Procedure is amended to read:

2093. (a) Every court, every judge, or clerk of any court, every justice, and every notary public, and every officer or person authorized to take testimony in any action or proceeding, or to decide upon evidence, has the power to administer oaths or affirmations.

(b) (1) Every shorthand reporter certified pursuant to Article 3 (commencing with Section 8020) of Chapter 13 of Division 3 of the Business and Professions Code has the power to administer oaths or affirmations and may perform the duties of the deposition officer pursuant to Section 2025. The certified shorthand reporter shall be entitled to receive fees for services rendered during a deposition, including fees for deposition services, as specified in subdivision (c) of Section 8211 of the Government Code.

(2) This subdivision shall also apply to depositions taken by telephone or other remote electronic means as specified in Sections 2017 and 2025.

(c) A former judge or justice of a court of record in this state who retired or resigned from office, other than a judge or justice who was retired by the Supreme Court for disability, shall have the power to administer oaths or affirmations, if the former judge or justice requests and receives a certification from the Commission on Judicial Performance that there was no formal disciplinary proceeding pending at the time of retirement or resignation. Where no formal disciplinary proceeding was pending at the time of retirement or resignation, the Commission on Judicial Performance shall issue the certification.

No law, rule, or regulation regarding the confidentiality of proceedings of the Commission on Judicial Performance shall be construed to prohibit the Commission on Judicial Performance from issuing a certificate as provided for in this section.



SEC. 13. Section 915 of the Evidence Code is amended to read:

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

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

SEC. 14. Section 68113 of the Government Code is repealed.

SEC. 15. Section 68502.5 of the Government Code is amended to read:

68502.5. (a) The Judicial Council may, as part of its trial court budget process, seek input from groups and individuals as it deems appropriate including, but not limited to, advisory committees and the Administrative Director of the Courts. The trial court budget process may include, but is not limited to, the following:

- (1) The receipt of budget requests from the trial courts.
- (2) The review of the trial courts' budget requests and evaluate them against performance criteria established by the Judicial



Council by which a court's performance, level of coordination, and efficiency can be measured.

(3) The annual adoption of the projected cost in the subsequent fiscal year of court operations as defined in Section 77003 for each trial court. This estimation shall serve as a basis for recommended court budgets, which shall be developed for comparison purposes and to delineate funding responsibilities.

(4) The annual approval of a schedule for the allocation of moneys to individual courts and an overall trial court budget for forwarding to the Governor for inclusion in the Governor's proposed State Budget. The schedule shall be based on the performance criteria established pursuant to paragraph (2), on a minimum standard established by the Judicial Council for the operation and staffing of all trial court operations, and on any other factors as determined by the Judicial Council. This minimum standard shall be modeled on court operations using all reasonable and available measures to increase court efficiency. The schedule of allocations shall assure that all trial courts receive funding for the minimum operating and staffing standards before funding operating and staffing requests above the minimum standards, and shall include incentives and rewards for any trial court's implementation of efficiencies and cost saving measures.

(5) The reallocation of funds during the course of the fiscal year to ensure equal access to the trial courts by the public, to improve trial court operations, and to meet trial court emergencies. Neither the state nor the counties shall have any obligation to replace moneys appropriated for trial courts and reallocated pursuant to this paragraph.

(6) The allocation of funds in the Trial Court Improvement Fund to ensure equal access to trial courts by the public, to improve trial court operations, and to meet trial court emergencies.

(7) Upon approval of the trial courts' budget by the Legislature, the preparation during the course of the fiscal year of allocation schedules for payments to the trial courts, consistent with Section 68085, which shall be submitted to the Controller's office by the 10th day of the month in which payments are to be made.

(8) The establishment of rules regarding a court's authority to transfer trial court funding moneys from one functional category to another in order to address needs in any functional category.



(9) At the request of the presiding judge of a trial court, an independent review of the funding level of the court to determine whether it is adequate to enable the court to discharge its statutory and constitutional responsibilities.

(10) From time to time, a review of the level of fees charged by the courts for various services and prepare recommended adjustments for forwarding to the Legislature.

(11) Provisions set forth in rules adopted pursuant to Section 77206 of the Government Code.

(b) Courts and counties shall establish procedures to allow for the sharing of information as it relates to approved budget proposals and expenditures that impact the respective court and county budgets. The procedures shall include, upon the request of a court or county, that a respective court or county shall provide the requesting court or county a copy of its approved budget and, to the extent possible, approved program expenditure component information and a description of budget changes that are anticipated to have an impact on the requesting court or county. The Judicial Council shall provide to the Legislature on December 31, 2001, and yearly thereafter, budget expenditure data at the program component level for each court.

(c) The Judicial Council shall retain the ultimate responsibility to adopt a budget and allocate funding for the trial courts and perform the other activities listed in subdivision (a) that best assure their ability to carry out their functions, promote implementation of statewide policies, and promote the immediate implementation of efficiencies and cost savings measures in court operations, in order to guarantee equal access to the courts.

SEC. 16. Section 68511.3 of the Government Code is amended to read:

68511.3. (a) The Judicial Council shall formulate and adopt uniform forms and rules of court for litigants proceeding in forma pauperis. These rules shall provide for all of the following:

(1) Standard procedures for considering and determining applications for permission to proceed in forma pauperis, including, in the event of a denial of permission, a written statement detailing the reasons for denial and an evidentiary hearing where there is a substantial evidentiary conflict.

(2) Standard procedures to toll relevant time limitations when a pleading or other paper accompanied by the application is timely



lodged with the court and delay is caused due to the processing of the application to proceed in forma pauperis.

(3) Proceeding in forma pauperis at every stage of the proceedings at both the appellate and trial levels of the court system.

(4) The confidentiality of the financial information provided to the court by these litigants.

(5) That the court may authorize the clerk of the court, county financial officer, or other appropriate county officer to make reasonable efforts to verify the litigant's financial condition without compromising the confidentiality of the application.

(6) That permission to proceed in forma pauperis be granted to all of the following:

(A) Litigants who are receiving benefits pursuant to the Supplemental Security Income (SSI) and State Supplemental Payments (SSP) programs (Sections 12200 to 12205, inclusive, of the Welfare and Institutions Code), the California Work Opportunity and Responsibility to Kids Act (CalWORKs) program (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code), the Food Stamp program (7 U.S.C. Sec. 2011 et seq.), or Section 17000 of the Welfare and Institutions Code.

(B) Litigants whose monthly income is 125 percent or less of the current monthly poverty line annually established by the Secretary of Health and Human Services pursuant to the Omnibus Budget Reconciliation Act of 1981, as amended.

(C) Other persons when in the court's discretion, this permission is appropriate because the litigant is unable to proceed without using money which is necessary for the use of the litigant or the litigant's family to provide for the common necessities of life.

(b) (1) Litigants who apply for permission to proceed in forma pauperis pursuant to subparagraph (A) of paragraph (6) of subdivision (a) shall declare under penalty of perjury that they are receiving the benefits and may voluntarily provide the court with their date of birth and social security number or their Medi-Cal identification number to permit the court to verify the applicant's receipt of public assistance. The court may require any applicant, except a defendant in an unlawful detainer action, who chooses not to disclose his or her social security number for verification



purposes to attach to the application documentation of benefits to support the claim and all other financial information on a form promulgated by the Judicial Council for this purpose.

(2) Litigants who apply for permission to proceed in forma pauperis pursuant to subparagraph (B) or (C) of paragraph (6) of subdivision (a) shall file a financial statement under oath on a form promulgated by, and pursuant to rules adopted by, the Judicial Council.

(c) The forms and rules adopted by the Judicial Council shall provide for the disclosure of the following information about the litigant:

(1) Current street address.

(2) Occupation and employer.

(3) Monthly income and expenses.

(4) Address and value of any real property owned directly or beneficially.

(5) Personal property with a value that exceeds five hundred dollars (\$500).

The information furnished by the litigant shall be used by the court in determining his or her ability to pay all or a portion of the fees and costs.

(d) At any time after the court has granted a litigant permission to proceed in forma pauperis and prior to final disposition of the case, the clerk of the court, county financial officer, or other appropriate county officer may notify the court of any changed financial circumstances which may enable the litigant to pay all or a portion of the fees and costs which had been waived. The court may authorize the clerk of the court, county financial officer, or other appropriate county officer to require the litigant to appear before and be examined by the person authorized to ascertain the validity of their indigent status. However, no litigant shall be required to appear more than once in any four-month period. A litigant proceeding in forma pauperis shall notify the court within five days of any settlement or monetary consideration received in settlement of this litigation and of any other change in financial circumstances that affects the litigant's ability to pay court fees and costs. After the litigant either (1) appears before and is examined by the person authorized to ascertain the validity of his or her indigent status or (2) notifies the court of a change in financial circumstances, the court may then order the litigant to pay to the



county the sum and in any manner the court believes is compatible with the litigant's financial ability.

In any action or proceeding in which the litigant whose fees and costs have been waived would have been entitled to recover those fees and costs from another party to the action or proceeding had they been paid, the court may assess the amount of the waived fees and costs against the other party and order the other party to pay that sum to the county or to the clerk and serving and levying officers respectively, or the court may order the amount of the waived fees and costs added to the judgment and so identified by the clerk.

Execution may be issued on any order provided for in this subdivision in the same manner as on a judgment in a civil action. When an amount equal to the sum due and payable to the clerk has been collected upon the judgment, these amounts shall be remitted to the clerk within 30 days. Thereafter, when an amount equal to the sum due to the serving and levying officers has been collected upon the judgment, these amounts shall be due and payable to those officers and shall be remitted within 30 days. If the remittance is not received by the clerk within 30 days or there is a filing of a partial satisfaction of judgment in an amount at least equal to the fees and costs payable to the clerk or a satisfaction of judgment has been filed, notwithstanding any other provision of law, the court may issue an abstract of judgment, writ of execution, or both for recovery of those sums, plus the fees for issuance and execution and an additional fee for administering this section. The county board of supervisors shall establish a fee, not to exceed actual costs of administering this subdivision and in no case exceeding twenty-five dollars (\$25), which shall be added to the writ of execution.

(e) Notwithstanding subdivision (a), a person who is sentenced to imprisonment in a state prison or confined in a county jail and, during the period of imprisonment or confinement, files a civil action or notice of appeal of a civil action in forma pauperis shall be required to pay the full amount of the filing fee to the extent provided in this subdivision.

(1) In addition to the form required by this section for filing in forma pauperis, an inmate shall file a copy of a statement of account for any sums due to the inmate for the six-month period immediately preceding the filing of the civil action or notice of



appeal of a civil action. This copy shall be certified by the appropriate official of the Department of Corrections or a county jail.

(2) Upon filing the civil action or notice of appeal of a civil action, the court shall assess, and when funds exist, collect, as a partial payment of any required court fees, an initial partial filing fee of 20 percent of the greater of one of the following:

(A) The average monthly deposits to the inmate's account.

(B) The average monthly balance in the inmate's account for the six-month period immediately preceding the filing of the civil action or notice of appeal.

(3) After payment of the initial partial filing fee, the inmate shall be required to make monthly payments of 20 percent of the preceding month's income credited to the inmate's account. The Department of Corrections shall forward payments from this account to the clerk of the court each time the amount in the account exceeds ten dollars (\$10) until the filing fees are paid.

(4) In no event shall the filing fee collected pursuant to this subdivision exceed the amount of fees permitted by law for the commencement of a civil action or an appeal of a civil action.

(5) In no event shall an inmate be prohibited from bringing a civil action or appeal of a civil action solely because the inmate has no assets and no means to pay the initial partial filing fee.

SEC. 17. Section 71629 of the Government Code is amended to read:

71629. Except as provided in Sections 71624, 71625, 71626, 71626.5, 71627, and 71628, and notwithstanding any other provision of law:

(a) As provided in Section 71612, the implementation of this chapter shall not be a cause for the modification of the level of trial court employment benefits. If the same trial court employment benefits are not permitted by law or the plan vendor, the trial court shall provide other trial court employment benefits at the same level subject to the provisions of subdivision (b). The level of trial court employment benefits provided to a trial court employee as of the implementation date of this chapter shall remain in effect unless modified pursuant to subdivision (b).

(b) For employees who are represented by a recognized employee organization, the level of trial court employment benefits provided to a trial court employee may not be modified



until after the expiration of an existing memorandum of understanding or agreement or a period of 24 months, whichever is longer, unless the trial court and recognized employee organization mutually agree to a modification. For employees who are not represented by a recognized employee organization, the level of trial court employment benefits may be revised by the trial court.

(c) The trial court shall reimburse the county for the cost of coverage of trial court employees in trial court employment benefit plans. If the county administers trial court employment benefits to trial court employees, or if the trial court contracts with the county to administer trial court employment benefits to trial court employees, a trial court employee shall be eligible to participate in trial court employment benefits subject to trial court employment benefit regulations, policies, terms and conditions, and subject to both of the following:

(1) A trial court employee shall have the right to receive the same level of trial court employment benefits as county employees in similar classifications, as designated by the trial court subject to the obligation to meet and confer in good faith, without the opportunity to meet and confer with the county as to those benefits.

(2) The level of trial court employment benefits accruing to a trial court employee is subject to modification by the county if the county changes the level of the same employment benefits accruing to county employees in classifications that have been designated as similar classification pursuant to paragraph (1).

(d) As of the implementation date of this chapter:

(1) If the trial court administers trial court employment benefits to trial court employees separately from the county, the trial court shall continue to administer these benefits as provided under existing personnel policies, procedures, plans, or trial court employee memoranda of understanding or agreements.

(2) If the county administers trial court employment benefits to trial court employees or if the trial court contracts with the county to administer trial court employment benefits to trial court employees, the county may continue to administer trial court employment benefits to trial court employees pursuant to subdivision (e) or the trial court may administer trial court employment benefits to trial court employees pursuant to the following transition process:



(A) While an existing memorandum of understanding or agreement remains in effect or for a transition period of 24 months, whichever is longer, the county shall administer trial court employment benefits for represented trial court employees as provided in the applicable memorandum of understanding or agreement, unless the county is notified by the trial court pursuant to subparagraph (D) that the trial court no longer needs the county to administer specified benefits, or the trial court and the county mutually agree that the county will no longer administer specified benefits.

(B) For a transition period of up to 24 months after the implementation date of this chapter, the county shall administer trial court employment benefits for unrepresented trial court employees, unless notified by the trial court pursuant to subparagraph (D) that the trial court no longer needs the county to administer specified benefits, or the trial court and the county mutually agree that the county will no longer administer specified benefits. During the transition period, if the county intends to change unrepresented trial court employees' trial court employment benefits, the county shall provide the trial court with at least 60 days' notice, or a mutually agreed to amount of notice, before any change in benefits is implemented so the trial court can decide whether to accept the county's change or consider alternatives and arrange to provide benefits on its own.

(C) If, during the transition period, the trial court decides to offer particular trial court employment benefits that are different from what the county is administering, the trial court shall be responsible for administering those particular benefits.

(D) If the trial court decides that it no longer needs the county to administer specified trial court employment benefits to trial court employees, the trial court shall provide the county with at least 60 days' notice, or a mutually agreed to amount of notice.

(e) To facilitate trial court employee participation in county trial court employment benefit plans, the trial court and county may mutually agree that the county shall administer the payroll for trial court employees.

(f) A county shall have authority to provide trial court employment benefits to trial court employees if those benefits are requested by the trial court and subject to county concurrence to providing those benefits. A county's agreement to provide those



benefits shall not be construed to create a meet and confer obligation between the county and any recognized employee organization.

(g) Nothing in this section shall prevent the trial court from arranging for trial court employees other trial court employment benefits plans subject to the obligation to meet and confer in good faith.

SEC. 18. Section 72055 of the Government Code is amended to read:

72055. (a) The total fee for filing of the first paper in a limited civil case shall be ninety dollars (\$90), except that in a case where the amount demanded, excluding attorney's fees and costs, is ten thousand dollars (\$10,000) or less, the fee shall be eighty-three dollars (\$83). The first page of the first paper shall state whether the amount demanded exceeds or does not exceed ten thousand dollars (\$10,000).

(b) This section applies to the initial complaint, petition, or application, and any papers transmitted from another court on the transfer of a civil action or proceeding, but does not include documents filed pursuant to Section 491.150, 704.750, or 708.160 of the Code of Civil Procedure.

(c) The term "total fee" as used in this section and Section 72056 includes any amount allocated to the Judges' Retirement Fund pursuant to Section 72056.1, any automation fee imposed pursuant to Section 68090.7, any construction fee imposed pursuant to Section 76238, and the law library fee established pursuant to Article 2 (commencing with Section 6320) of Chapter 5 of Division 3 of the Business and Professions Code. The term "total fee" as used in this section and Section 72056 also includes any dispute resolution fee imposed pursuant to Section 470.3 of the Business and Professions Code, but the Judicial Council may authorize any trial court to exclude any portion of this dispute resolution fee from the term "total fee."

(d) The fee shall be waived in any action for damages against a defendant, based upon the defendant's commission of a felony offense, upon presentation to the clerk of the court of a certified copy of the abstract of judgment of conviction of the defendant of the felony giving rise to the claim for damages. If the plaintiff would have been entitled to recover those fees from the defendant had they been paid, the court may assess the amount of the waived



fees against the defendant and order the defendant to pay that sum to the county.

SEC. 19. Section 77001 of the Government Code is amended to read:

77001. The Judicial Council shall adopt rules which establish a decentralized system of trial court management. These rules shall ensure:

(a) Local authority and responsibility of trial courts to manage day-to-day operations.

(b) Countywide administration of the trial courts.

(c) The authority and responsibility of trial courts to manage all of the following, consistent with statute, rules of court, and standards of judicial administration:

(1) Annual allocation of funding, including policies and procedures about moving funding between functions or line items or programs.

(2) Local personnel plans, including the promulgation of personnel policies.

(3) Processes and procedures to improve court operations and responsiveness to the public.

(4) The trial courts of each county shall establish the means of selecting presiding judges, assistant presiding judges, executive officers or court administrators, clerks of court, and jury commissioners.

(d) Trial court input into the Judicial Council budget process.

(e) Equal access to justice throughout California utilizing standard practices and procedures whenever feasible.

SEC. 20. Section 77003 of the Government Code is amended to read:

77003. (a) As used in this chapter, “court operations” means all of the following:

(1) Salaries, benefits, and public agency retirement contributions for superior and municipal court judges and for subordinate judicial officers. For purposes of this paragraph, “subordinate judicial officers” includes all commissioner or referee positions created prior to July 1, 1997, including positions created in the municipal court prior to July 1, 1997, which thereafter became positions in the superior court as a result of unification of the municipal and superior courts in a county, and including those commissioner positions created pursuant to



Sections 69904, 70141, 70141.9, 70142.11, 72607, 73794, 74841.5, and 74908; and includes any staff who provide direct support to commissioners; but does not include commissioners or staff who provide direct support to the commissioners whose positions were created after July 1, 1997, unless approved by the Judicial Council, subject to availability of funding.

(2) The salary, benefits, and public agency retirement contributions for other court staff including all municipal court staff positions specifically prescribed by statute.

(3) Those marshals and sheriffs as the court deems necessary for court operations.

(4) Court-appointed counsel in juvenile court dependency proceedings and counsel appointed by the court to represent a minor pursuant to Chapter 10 (commencing with Section 3150) of Part 2 of Division 8 of the Family Code.

(5) Services and supplies relating to court operations.

(6) Collective bargaining under Sections 71630 and 71639.3 with respect to court employees.

(7) Subject to paragraph (1) of subdivision (d) of Section 77212, actual indirect costs for county and city and county general services attributable to court operations, but specifically excluding, but not limited to, law library operations conducted by a trust pursuant to statute; courthouse construction; district attorney services; probation services; indigent criminal defense; grand jury expenses and operations; and pretrial release services.

(b) However, “court operations” does not include collection enhancements as defined in Rule 810 of the California Rules of Court as it read on July 1, 1996.

SEC. 20.5. Section 77003 of the Government Code is amended to read:

77003. (a) As used in this chapter, “court operations” means all of the following:

(1) Salaries, benefits, and public agency retirement contributions for superior and municipal court judges and for subordinate judicial officers. For purposes of this paragraph, “subordinate judicial officers” includes all commissioner or referee positions created prior to July 1, 1997, including positions created in the municipal court prior to July 1, 1997, which thereafter became positions in the superior court as a result of unification of the municipal and superior courts in a county, and



including those commissioner positions created pursuant to Sections 69904, 70141, 70141.9, 70142.11, 72607, 73794, 74841.5, and 74908; and includes any staff who provide direct support to commissioners; but does not include commissioners or staff who provide direct support to the commissioners whose positions were created after July 1, 1997, unless approved by the Judicial Council, subject to availability of funding.

(2) The salary, benefits, and public agency retirement contributions for other court staff including all municipal court staff positions specifically prescribed by statute.

(3) Those marshals and sheriffs as the court deems necessary for court operations.

(4) Court-appointed counsel in juvenile court dependency proceedings and counsel appointed by the court to represent a minor pursuant to Chapter 10 (commencing with Section 3150) of Part 2 of Division 8 of the Family Code.

(5) Services and supplies relating to court operations.

(6) Collective bargaining under Sections 71630 and 71639.3 with respect to court employees .

(7) Subject to paragraph (1) of subdivision (d) of Section 77212, actual indirect costs for county and city and county general services attributable to court operations, but specifically excluding, but not limited to, law library operations conducted by a trust pursuant to statute; courthouse construction; district attorney services; probation services; indigent criminal defense; grand jury expenses and operations; and pretrial release services.

(8) Except as provided in subdivision (b), other matters listed as court operations in Rule 810 of the California Rules of Court as it read on July 1, 1996.

(b) However, “court operations” does not include collection enhancements as defined in Rule 810 of the California Rules of Court as it read on July 1, 1996.

SEC. 21. Section 77009 of the Government Code is amended to read:

77009. (a) For the purposes of funding trial court operations, each board of supervisors shall establish in the county treasury a Trial Court Operations Fund, which will operate as an agency fund. All funds appropriated in the Budget Act and allocated and reallocated to each court in the county by the Judicial Council shall be deposited into the fund. Accounts shall be established in the



Trial Court Operations Fund for each trial court in the county, except that one account may be established for courts which have a unified budget. In a county where court budgets include appropriations for expenditures administered on a countywide basis, including, but not limited to, court security, centralized data-processing and planning and research services, an account for each centralized service shall be established and funded from those appropriations.

(b) The moneys of the Trial Court Operations Fund arising from deposits of funds appropriated in the Budget Act and allocated or reallocated to each court in the county by the Judicial Council shall be payable only for the purposes set forth in Sections 77003 and 77006.5, and for services purchased by the court pursuant to subdivisions (b) and (c) of Section 77212. The presiding judge of each court in a county, or his or her designee, shall authorize and direct expenditures from the fund and the county auditor-controller shall make payments from the funds as directed. Approval of the board of supervisors is not required for expenditure from this fund.

(c) All funds received by a trial court from any source shall be deposited in the trial court operations fund, except as provided in this section. Funds that are received to fulfill the requirements of Article 4 (commencing with Section 4250) of Chapter 2 of Part 2 of Division 9 and Division 14 (commencing with Section 10000) of the Family Code shall be identified and maintained in a separate account established in the fund for this purpose. All other funds that are received for purposes other than court operations, as defined in Section 77003 and Rule 810 of the California Rules of Court, shall be identified and maintained in one or more separate accounts established in the fund pursuant to procedures adopted by the Judicial Council. This subdivision shall only apply to funds received by the courts for operating and program purposes. This subdivision shall not apply to either of the following:

(1) Funds received by the courts pursuant to Section 68084, if those funds are not for operating or program use.

(2) Payments from a party or a defendant received by a trial court or the county for any fees, fines, or forfeitures.

(d) Interest received by a county which is attributable to investment of money required by this section to be deposited in its



Trial Court Operations Fund shall be deposited in the fund and shall be used for trial court operations purposes.

(e) In no event shall interest be charged to the Trial Court Operations Fund, except as provided in Section 77009.1.

(f) Reasonable administrative expenses incurred by the county associated with the operation of this fund shall be charged to each court on a pro rata basis in proportion to the total amount allocated to each court in this fund.

(g) A county, or city and county, may bill trial courts within its jurisdiction for costs for services provided by the county, or city and county, as described in Sections 77003 and 77212, including indirect costs as described in paragraph (7) of subdivision (a) of Section 77003 and Section 77212. The costs billed by the county, or the city and the county, pursuant to this subdivision shall not exceed the costs incurred by the county, or the city and the county, of providing similar services to county departments or special districts.

(h) Pursuant to Section 77206, the Controller, at the request of the Legislature, may perform financial and fiscal compliance audits of this fund. The Judicial Council or its representatives may perform audits and reviews of this fund wherever the records may be located.

(i) The Judicial Council, in consultation with the Controller's office, shall establish procedures to implement the provisions of this section and to provide for payment of trial court operations expenses, as described in Sections 77003 and 77006.5, incurred on July 1, 1997, and thereafter.

(j) Notwithstanding any other provision of law, including, but not limited to, this section, the Judicial Council may establish trial court operations funds separate from the county treasury. The operations funds may supersede those provided for under this section and may require the courts to include any or all money under the control of the court in the funds.

SEC. 21.5. Section 77009 of the Government Code is amended to read:

77009. (a) For the purposes of funding trial court operations, each board of supervisors shall establish in the county treasury a Trial Court Operations Fund, which will operate as an agency fund. All funds appropriated in the Budget Act and allocated and reallocated to each court in the county by the Judicial Council shall



be deposited into the fund. Accounts shall be established in the Trial Court Operations Fund for each trial court in the county, except that one account may be established for courts which have a unified budget. In a county where court budgets include appropriations for expenditures administered on a countywide basis, including, but not limited to, court security, centralized data processing and planning and research services, an account for each centralized service shall be established and funded from those appropriations.

(b) The moneys of the Trial Court Operations Fund arising from deposits of funds appropriated in the Budget Act and allocated or reallocated to each court in the county by the Judicial Council shall be payable only for the purposes set forth in Sections 77003 and 77006.5, and for services purchased by the court pursuant to subdivisions (b) and (c) of Section 77212. The presiding judge of each court in a county, or his or her designee, shall authorize and direct expenditures from the fund and the county auditor-controller shall make payments from the funds as directed. Approval of the board of supervisors is not required for expenditure from this fund.

(c) All funds received by a trial court from any source shall be deposited in the trial court operations fund, except as provided in this section. Funds that are received to fulfill the requirements of Article 4 (commencing with Section 4250) of Chapter 2 of Part 2 of Division 9 and Division 14 (commencing with Section 10000) of the Family Code shall be identified and maintained in a separate account established in the fund for this purpose. All other funds that are received for purposes other than court operations, as defined in Section 77003 and Rule 810 of the California Rules of Court, shall be identified and maintained in one or more separate accounts established in the fund pursuant to procedures adopted by the Judicial Council. This subdivision shall only apply to funds received by the courts for operating and program purposes. This subdivision shall not apply to either of the following:

(1) Funds received by the courts pursuant to Section 68084, if those funds are not for operating or program use.

(2) Payments from a party or a defendant received by a trial court or the county for any fees, fines, or forfeitures.

(d) Interest received by a county that is attributable to investment of money required by this section to be deposited in its



Trial Court Operations Fund shall be deposited in the fund and shall be used for trial court operations purposes.

(e) In no event shall interest be charged to the Trial Court Operations Fund, except as provided in Section 77009.1.

(f) Reasonable administrative expenses incurred by the county associated with the operation of this fund shall be charged to each court on a pro rata basis in proportion to the total amount allocated to each court in this fund.

(g) A county, or city and county, may bill trial courts within its jurisdiction for costs for services provided by the county, or city and county, as described in Sections 77003 and 77212, including indirect costs as described in paragraph (7) of subdivision (a) of Section 77003 and Section 77212. The costs billed by the county, or the city and the county, pursuant to this subdivision shall not exceed the costs incurred by the county, or the city and the county, of providing similar services to county departments or special districts.

(h) Pursuant to Section 77206, the Controller, at the request of the Legislature, may perform financial and fiscal compliance audits of this fund. The Judicial Council or its representatives may perform audits and reviews of this fund wherever the records may be located.

(i) The Judicial Council, in consultation with the Controller's office, shall establish procedures to implement this section and to provide for payment of trial court operations expenses, as described in Sections 77003 and 77006.5, incurred on July 1, 1997, and thereafter.

(j) Notwithstanding any other provision of law, including, but not limited to, this section, the Judicial Council may establish trial court operations funds separate from the county treasury. The operations funds may supersede those provided for under this section and may require the courts to include any or all money under the control of the court in the funds.

SEC. 22. Section 77202 of the Government Code is amended to read:

77202. (a) The Legislature shall make an annual appropriation to the Judicial Council for the general operations of the trial courts based on the request of the Judicial Council. The Judicial Council's trial court budget request shall meet the needs of all trial courts in a manner which promotes equal access to the



courts statewide. The Judicial Council shall allocate the appropriation to the trial courts in a manner that best ensures the ability of the courts to carry out their functions, promotes implementation of statewide policies, and promotes the immediate implementation of efficiencies and cost saving measures in court operations, in order to guarantee access to justice to citizens of the state.

The Judicial Council shall ensure that its trial court budget request and the allocations made by it reward each trial court's implementation of efficiencies and cost saving measures.

These efficiencies and cost saving measures shall include, but not be limited to, the following:

(1) The sharing or merger of court support staff among trial courts across counties.

(2) The assignment of any type of case to a judge for all purposes commencing with the filing of the case and regardless of jurisdictional boundaries.

(3) The establishment of a separate calendar or division to hear a particular type of case.

(4) In rural counties, the use of all court facilities for hearings and trials of all types of cases and the acceptance of filing documents in any case.

(5) The use of alternative dispute resolution programs, such as arbitration.

(6) The development and use of automated accounting and case-processing systems.

(b) The Judicial Council shall adopt policies and procedures governing practices and procedures for budgeting in the trial courts in a manner that best ensures the ability of the courts to carry out their functions and may delegate the adoption to the Administrative Director of the Courts. The Administrative Director of the Courts shall establish budget procedures and an annual schedule of budget development and management consistent with these rules.

SEC. 23. Section 77206 of the Government Code is amended to read:

77206. (a) Notwithstanding any other provision of law, the Judicial Council may regulate the budget and fiscal management of the trial courts. The Judicial Council, in consultation with the Controller, shall maintain appropriate regulations for



recordkeeping and accounting by the courts. The Judicial Council shall seek to ensure, by these provisions, that (1) the fiscal affairs of the trial courts are managed efficiently, effectively, and responsibly, and (2) all moneys collected by the courts, including filing fees, fines, forfeitures, and penalties, and all revenues and expenditures relating to court operations are known. The Judicial Council may delegate their authority under this section, when appropriate, to the Administrative Director of the Courts.

(b) Regulations, rules, and reporting requirements adopted pursuant to this chapter shall be exempt from review and approval or other processing by the Office of Administrative Law as provided for in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(c) The Controller, at the request of the Legislature, may perform and publish financial and fiscal compliance audits of the reports of court revenues and expenditures. The Controller shall report the results of these audits to the Legislature and the Judicial Council. The Judicial Council or its representative may perform audits and reviews of all court financial records wherever they may be located.

(d) The Judicial Council shall provide for the transmission of summary information concerning court revenues and expenditures to the Controller.

(e) The Judicial Council shall adopt rules to provide for reasonable public access to budget allocation and expenditure information at the state and local level.

(f) The Judicial Council shall adopt rules ensuring that, upon written request, the trial courts provide, in a timely manner, information relating to the administration of the courts, including financial information and other information that affects the wages, hours, and working conditions of trial court employees.

SEC. 24. Section 77212 of the Government Code is amended to read:

77212. (a) The State of California, the counties of California, and the trial courts of California, recognize that a unique and interdependent relationship has evolved between the courts and the counties over a sustained period of time. While it is the intent of this act to transfer all fiscal responsibility for the support of the trial courts from the counties to the State of California, it is imperative that the activities of the state, the counties, and the trial



courts be maintained in a manner that ensures that services to the people of California not be disrupted. Therefore, to this end, during the 1997–98 fiscal year, commencing on July 1, 1997, counties shall continue to provide and courts shall continue to use, county services provided to the trial courts on July 1, 1997, including, but not limited to: auditor/controller services, coordination of telephone services, data-processing and information technology services, procurement, human resources services, affirmative action services, treasurer/tax collector services, county counsel services, facilities management, and legal representation. These services shall be provided to the court at a rate that shall not exceed the costs of providing similar services to county departments or special districts. If the cost was not included in the county base pursuant to paragraph (1) of subdivision (b) of Section 77201 or was not otherwise charged to the court prior to July 1, 1997, and were court operation costs as defined in Section 77003 in fiscal year 1994–95, the court may seek adjustment of the amount the county is required to submit to the state pursuant Section 77201.

(b) In fiscal year 1998–99 commencing on July 1, 1998, and thereafter the county may give notice to the court that the county will no longer provide a specific service except that the county shall cooperate with the court to ensure that a vital service for the court shall be available from the county or other entities that provide the service. The notice must be given at least 90 days prior to the end of the fiscal year and shall be effective only upon the first day of the succeeding fiscal year.

(c) In fiscal year 1998–99, commencing on July 1, 1998, and thereafter, the court may give notice to the county that the court will no longer use a specific county service. The notice shall be given at least 90 days prior to the end of the fiscal year and shall be effective only upon the first day of the succeeding fiscal year. However, for three years from the effective date of this section, a court shall not terminate a service that involved the acquisition of equipment, including, but not limited to, computer and data processing systems, financed by a long-term financing plan whereby the county is dependent upon the court's continued financial support for a portion of the cost of the acquisition.

(d) (1) If a trial court desires to receive or continue to receive a specific service from a county or city and county as provided in



subdivision (c), and the county or city and county desires to provide or continue to provide that service as provided in subdivision (b), the presiding judge of that court and the county or city and county shall enter into a contract for that service. The contract shall identify the scope of service, method of service delivery, term of agreement, anticipated service outcomes, and the cost of the service. The court and the county or city and county shall cooperate in developing and implementing the contract.

For any contract entered into after January 1, 2002, the amount of any indirect or overhead costs shall be individually stated in any contract together with the method of calculation of the indirect or overhead costs. This amount shall not contain items that are not otherwise allowable court operations. The Judicial Council may audit the county figures to ensure compliance with this section and to determine the reasonableness of the figures.

(2) This subdivision applies to services to be provided in fiscal year 1999–2000 and thereafter.

SEC. 25. Section 1463.1 of the Penal Code is amended to read:

1463.1. Notwithstanding any other provisions of law except Section 77009 of the Government Code, any trial court may elect, with prior approval of the Administrative Director of the Courts, to deposit in a bank account pursuant to Section 53679 of the Government Code, all moneys deposited as bail with the court, or with the clerk thereof.

All moneys received and disbursed through the bank account shall be properly and uniformly accounted for under any procedures the Controller may deem necessary. The Judicial Council may regulate the bank accounts, provided that its regulations are not inconsistent with those of the Controller.

SEC. 26. Section 9.7 of this bill incorporates amendments to Section 2025 of the Code of Civil Procedure proposed by both this bill and SB 805. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 2025 of the Code of Civil Procedure, and (3) this bill is enacted after SB 805, in which case Section 9.6 of this bill shall not become operative.

SEC. 27. Section 20.5 of this bill incorporates amendments to Section 77003 of the Government Code proposed by both this bill and AB 1700. It shall only become operative if (1) both bills are



enacted and become effective on or before January 1, 2002, (2) each bill amends Section 77003 of the Government Code, and (3) this bill is enacted after AB 1700, in which case Section 20 of this bill shall not become operative.

SEC. 28. Section 21.5 of this bill incorporates amendments to Section 77009 of the Government Code proposed by this bill and SB 1191. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 77009 of the Government Code, and (3) this bill is enacted after SB 1191, in which case Section 77009 of the Government Code, as amended by SB 1191, shall remain operative only until the operative date of this bill, at which time Section 21.5 of this bill shall become operative, and Section 21 of this bill shall not become operative.



Approved _____, 2001

Governor

