

AMENDED IN SENATE JUNE 21, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 3081

Introduced by Committee on Judiciary (Corbett (Chair), Harman (Vice Chair), Bates, Hancock, Jackson, Laird, Lieber, Longville, Montanez, Pacheco, and Steinberg)

March 11, 2004

An act to amend Sections 6202, 17083, and 17550.47 of the Business and Professions Code, to amend Section 47 of the Civil Code, to amend Sections 93, 94, 116.310, 116.770, 437c, 485.230, 708.020, 708.030, 1005, 1141.16, 1141.24, 1283.05, 1775.11, 1985.3, 1985.6, 1987.5, 1991.1, and 2093 of, to add Title 4 (commencing with Section 2016.010) to Part 4 of, and to repeal Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of, the Code of Civil Procedure, to amend Sections 45312, 87675, 87679, and 88131 of the Education Code, to amend Sections 915, 1156, 1156.1, and 1560 of the Evidence Code, to amend Sections 3110.5, 3666, and 4331 of the Family Code, to amend Sections 309 and 5934 of the Fish and Game Code, to amend Sections 6276.04, 11045, 11187, 11189, 11511, 12972, 18671, 68092.5, and 68616 of the Government Code, to amend Sections 5710 and 6613 of the Labor Code, to amend Sections 186.11, 1054.6, and 1524 of the Penal Code, to amend Sections 451 and 452 of the Probate Code, to amend Section 20104.4 of the Public Contract Code, to amend Sections 3357 and 3769 of the Public Resources Code, to amend Section 1794 of the Public Utilities Code, to amend Section 25110 of the Revenue and Taxation Code, to amend Section 3050.1 of the Vehicle Code, and to amend Section 1100 of the Water Code, relating to civil discovery.

LEGISLATIVE COUNSEL'S DIGEST

AB 3081, as amended, Committee on Judiciary. Civil discovery.

Existing law sets forth numerous provisions governing discovery in civil actions and proceedings, as specified.

This bill would, operative July 1, 2005, revise and recast those provisions enacting the Civil Discovery Act providing for the scope of discovery, the use of technology in conducting discovery in a complex case, the attorney work product, the methods and sequence of discovery, nonparty discovery, sanctions, the time for completion of discovery, the oral deposition inside California, the oral deposition outside California, depositions by written questions, depositions in actions pending outside California, written interrogatories, inspection and production of documents, tangible things, land and other property, physical or mental examination, requests for admission, form interrogatories and requests for admission, simultaneous exchange of expert witness information, the perpetuation of testimony or preservation of evidence before filing an action, and the perpetuation of testimony or preservation of information pending appeal.

This bill would make various conforming changes. The bill would also declare that nothing therein is intended to substantively change the law of civil discovery.

This bill would also incorporate further changes to the Civil Discovery Act proposed by AB 3078, contingent upon its prior enactment.

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

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

- 1 SECTION 1. Section 6202 of the Business and Professions
- 2 Code is amended to read:
- 3 6202. The provisions of Article 3 (commencing with Section
- 4 950) of Chapter 4 of Division 8 of the Evidence Code shall not
- 5 prohibit the disclosure of any relevant communication, nor shall
- 6 the provisions of Chapter 4 (commencing with Section 2018.010)
- 7 of Title 4 of Part 4 of the Code of Civil Procedure be construed to
- 8 prohibit the disclosure of any relevant work product of the attorney
- 9 in connection with: (a) an arbitration hearing or mediation
- 10 pursuant to this article; (b) a trial after arbitration; or (c) judicial
- 11 confirmation, correction, or vacation of an arbitration award. In no



1 event shall such disclosure be deemed a waiver of the confidential
2 character of such matters for any other purpose.

3 SEC. 2. Section 17083 of the Business and Professions Code
4 is amended to read:

5 17083. The testimony of any witness in any action brought
6 under this chapter may be taken by deposition. The provisions of
7 Chapter 3 (commencing with Section 2002) of Title 3 of Part 4 of,
8 and the provisions of Title 4 (commencing with Section 2016.010)
9 of Part 4 of, the Code of Civil Procedure are applicable to the
10 witness, the testimony and the deposition.

11 In addition, the books and records of any party, or of any such
12 witness, may be subpoenaed into court and introduced into
13 evidence, or introduced, by reference, into evidence, and may be
14 required to be produced at the taking of the deposition of any party
15 or of any such witness and there inquired into.

16 SEC. 3. Section 17550.47 of the Business and Professions
17 Code is amended to read:

18 17550.47. (a) (1) Any person aggrieved who suffers a loss of
19 more than fifty dollars (\$50) of amounts paid for air or sea
20 transportation or travel services may file a claim with the Travel
21 Consumer Restitution Corporation by filing a claim form as
22 required by Section 17550.46 and paying, by check or money
23 order, a processing fee to the Travel Consumer Restitution
24 Corporation in the amount of thirty-five dollars (\$35). Any check
25 for the processing fee that is returned unpaid to the corporation by
26 the financial institution upon which it is drawn shall be returned
27 to the claimant and the claim shall be rejected for filing. Any
28 claimant whose claim is rejected may resubmit his or her claim
29 upon payment of a processing fee of fifty dollars (\$50).

30 (2) Any processing fee required by paragraph (1) shall be
31 nonrefundable except where (A) a claim is denied on the basis as
32 set forth in the statement of decision that either the seller of travel,
33 at the time of sale, was not a participant in the Travel Consumer
34 Restitution Fund or the seller of travel was not registered, or (B)
35 the claim is granted in whole or in part. In either case, the
36 processing fee shall be refunded to the person aggrieved upon
37 denial or upon payment of the claim, whichever is applicable.

38 (3) In no event shall a person aggrieved have more than one
39 year after the scheduled date of completion of travel within which
40 to file a claim with the Travel Consumer Restitution Fund.

1 (b) A person aggrieved may recover from the Travel Consumer
2 Restitution Fund an amount not to exceed fifteen thousand dollars
3 (\$15,000) per person aggrieved, not to exceed the amount paid to
4 the participant by or on behalf of the person aggrieved for the
5 transportation or travel services. Payments from the restitution
6 fund shall be limited to restitution for sums paid for transportation
7 or travel services and shall not include any other amounts,
8 including, but not limited to, payment for lost wages, pain and
9 suffering, emotional distress, travel insurance, lost luggage, or any
10 consequential damages. The person aggrieved shall not be entitled
11 to receive attorney's fees in connection with a filed claim or on
12 appeal.

13 (c) All claims are to be decided on the written record before the
14 corporation, with no hearing to be held. The record shall consist
15 of a fully executed and complete claim form, any other
16 documentation submitted by the claimant or the participant, and
17 any documents or reports submitted by staff or the designated
18 representative of the office of the Attorney General. Claims are to
19 be decided within 45 days of receipt unless (1) the designated
20 representative of the office of the Attorney General requests a
21 continuance to obtain and submit information, or (2) the Travel
22 Consumer Restitution Corporation determines that additional
23 information or documentation is required to decide the claim. In
24 either case, the claim shall be decided within 45 days of receipt of
25 all additional information or documentation. A claim not decided
26 timely shall be deemed granted.

27 (d) Whenever the Travel Consumer Restitution Corporation
28 denies a claim in whole or in part, it shall provide to the claimant
29 a written statement of decision setting forth the factual and legal
30 basis for the denial.

31 (e) A claimant may request reconsideration of an adverse
32 decision of the Travel Consumer Restitution Corporation by
33 mailing a written request, accompanied by a processing fee of fifty
34 dollars (\$50) paid by check or money order, within 20 days of the
35 date a notice of denial and statement of decision was mailed to the
36 claimant. Any check for the processing fee that is returned unpaid
37 to the Travel Consumer Restitution Corporation by the financial
38 institution upon which it is drawn shall be returned to the claimant
39 and the request for reconsideration shall not be determined until
40 the claimant has paid the fifty dollar (\$50) processing fee.



1 (f) The Travel Consumer Restitution Corporation shall, within
2 60 days of receipt of the request, either decide the request or advise
3 the claimant that additional information or documentation is
4 needed, and, if the decision is a denial in whole or in part, it shall
5 provide to the claimant and seller of travel a written statement of
6 decision setting forth the factual and legal basis for the decision.
7 No appeal may be taken pursuant to subdivision (g) until
8 reconsideration has been requested and decided. The claimant
9 shall not be entitled to any attorney's fees incurred in connection
10 with presentation of a claim or request for reconsideration.

11 (g) No decision of the Travel Consumer Restitution
12 Corporation granting or denying a claim in whole or part shall be
13 subject to review or appeal except as provided in this section. A
14 claimant may seek review of the denial, in whole or part, of a claim
15 by filing a notice of appeal after having served the notice by mail
16 on the Travel Consumer Restitution Corporation. The notice of
17 appeal shall be filed and served on the Travel Consumer
18 Restitution Corporation not later than 30 days after a written
19 statement of decision on a request for reconsideration has been
20 mailed to the claimant. The notice of appeal from a decision of the
21 Travel Consumer Restitution Corporation shall be filed with the
22 clerk of the superior court either in the county in which the
23 principal place of business of the Travel Consumer Restitution
24 Corporation is located, or in the county in which the claimant was
25 a resident at the time the claimant purchased the transportation or
26 travel services in dispute.

27 (h) The claimant shall pay the same filing fee as is required for
28 appeals from small claims court. The Travel Consumer Restitution
29 Corporation shall file its response and the record of the claim
30 before the corporation with the clerk of the superior court within
31 30 days of the day the notice of appeal was served on the Travel
32 Consumer Restitution Corporation.

33 (i) Upon the filing of the record the clerk of the court shall
34 schedule a hearing for the earliest available time and shall mail
35 written notice of the hearing at least 14 days prior to the time set
36 for the hearing.

37 (j) The hearing on appeal shall be limited to the record before
38 the Travel Consumer Restitution Corporation and any relevant
39 evidence that could not have been with reasonable diligence
40 submitted previously to the corporation. The reviewing court shall

1 affirm the decision if it is supported by substantial evidence in light
2 of the entire record. The pretrial discovery procedures described
3 in Section 2019.010 of the Code of Civil Procedure are not
4 permitted, there is no right to trial by jury, and the decision of the
5 superior court shall be appealable by either party. No money may
6 be claimed from or paid by the Travel Consumer Restitution Fund
7 except in accordance with the provisions and procedures set forth
8 in this article. No provision herein shall limit or otherwise affect
9 those remedies as may be available against persons or entities other
10 than the Travel Consumer Restitution Corporation.

11 (k) If the claimant prevails in whole or in part on an appeal, the
12 claimant shall not be entitled to an award in excess of the amount
13 of the original claim.

14 (l) Any claim awarded by the corporation shall be paid
15 promptly by the trustee of the restitution fund when the time for
16 appeal has passed. Any judgment on appeal shall be paid promptly
17 by the trustee of the restitution fund whenever the judgment
18 becomes final. If there should be insufficient funds to pay a claim
19 when otherwise due, claims shall be paid in the order received. If
20 the Travel Consumer Restitution Corporation ceases to operate
21 pursuant to the terms of Section 17550.52, any remaining trust
22 funds shall be allocated on a pro rata basis to claims accruing prior
23 to the corporation ceasing to operate, after payment of outstanding
24 debts and liabilities as provided in Section 17550.57.

25 (m) A claim shall require a majority of at least three affirmative
26 votes for denial, otherwise it shall be deemed granted.

27 (n) (1) A director shall not participate in the decision of a claim
28 if the director has a financial interest in the outcome of the
29 decision, has a financial interest in or is employed by the seller of
30 travel that is the subject of the claim, or has any familial
31 relationship or close personal friendship with either the claimant
32 or any owner, officer, director, or manager of the seller of travel
33 that is the subject of the claim.

34 (2) The director shall disclose to the other directors before a
35 claim is considered all matters that disqualify the director from
36 participating in the decision of the claim as described in paragraph
37 (1).

38 SEC. 4. Section 47 of the Civil Code is amended to read:

39 47. A privileged publication or broadcast is one made:

40 (a) In the proper discharge of an official duty.



(b) In any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law and reviewable pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure, except as follows:

(1) An allegation or averment contained in any pleading or affidavit filed in an action for marital dissolution or legal separation made of or concerning a person by or against whom no affirmative relief is prayed in the action shall not be a privileged publication or broadcast as to the person making the allegation or averment within the meaning of this section unless the pleading is verified or affidavit sworn to, and is made without malice, by one having reasonable and probable cause for believing the truth of the allegation or averment and unless the allegation or averment is material and relevant to the issues in the action.

(2) This subdivision does not make privileged any communication made in furtherance of an act of intentional destruction or alteration of physical evidence undertaken for the purpose of depriving a party to litigation of the use of that evidence, whether or not the content of the communication is the subject of a subsequent publication or broadcast which is privileged pursuant to this section. As used in this paragraph, “physical evidence” means evidence specified in Section 250 of the Evidence Code or evidence that is property of any type specified in Chapter 14 (commencing with Section 2031.010) of Title 4 of Part 4 of the Code of Civil Procedure.

(3) This subdivision does not make privileged any communication made in a judicial proceeding knowingly concealing the existence of an insurance policy or policies.

(4) A recorded lis pendens is not a privileged publication unless it identifies an action previously filed with a court of competent jurisdiction which affects the title or right of possession of real property, as authorized or required by law.

(c) In a communication, without malice, to a person interested therein, (1) by one who is also interested, or (2) by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication to be innocent, or (3) who is requested by the person interested to give the information. This subdivision applies to and includes a

1 communication concerning the job performance or qualifications
2 of an applicant for employment, based upon credible evidence,
3 made without malice, by a current or former employer of the
4 applicant to, and upon request of, one whom the employer
5 reasonably believes is a prospective employer of the applicant.
6 This subdivision authorizes a current or former employer, or the
7 employer's agent, to answer whether or not the employer would
8 rehire a current or former employee. This subdivision shall not
9 apply to a communication concerning the speech or activities of an
10 applicant for employment if the speech or activities are
11 constitutionally protected, or otherwise protected by Section
12 527.3 of the Code of Civil Procedure or any other provision of law.

13 (d) (1) By a fair and true report in, or a communication to, a
14 public journal, of (A) a judicial, (B) legislative, or (C) other public
15 official proceeding, or (D) of anything said in the course thereof,
16 or (E) of a verified charge or complaint made by any person to a
17 public official, upon which complaint a warrant has been issued.

18 (2) Nothing in paragraph (1) shall make privileged any
19 communication to a public journal that does any of the following:

20 (A) Violates Rule 5-120 of the State Bar Rules of Professional
21 Conduct.

22 (B) Breaches a court order.

23 (C) Violates any requirement of confidentiality imposed by
24 law.

25 (e) By a fair and true report of (1) the proceedings of a public
26 meeting, if the meeting was lawfully convened for a lawful
27 purpose and open to the public, or (2) the publication of the matter
28 complained of was for the public benefit.

29 SEC. 5. Section 93 of the Code of Civil Procedure is amended
30 to read:

31 93. (a) The plaintiff has the option to serve case
32 questionnaires with the complaint, using forms approved by the
33 Judicial Council. The questionnaires served shall include a
34 completed copy of the plaintiff's completed case questionnaire,
35 and a blank copy of the defendant's case questionnaire.

36 (b) Any defendant upon whom a case questionnaire is served
37 shall serve a completed defendant's case questionnaire upon the
38 requesting plaintiff with the answer.

39 (c) The case questionnaire shall be designed to elicit
40 fundamental information about each party's case, including names

1 and addresses of all witnesses with knowledge of any relevant
2 facts, a list of all documents relevant to the case, a statement of the
3 nature and amount of damages, and information covering
4 insurance coverages, injuries and treating physicians. The Judicial
5 Council shall design and develop forms for case questionnaires.

6 (d) Approved forms shall be made available by the clerk of the
7 court.

8 (e) If a party on whom a case questionnaire has been served
9 under subdivision (a) or (b) fails to serve a timely or a complete
10 response to that questionnaire, the party serving the questionnaire
11 may move for an order compelling a response or a further response
12 and for a monetary sanction under Chapter 7 (commencing with
13 Section 2023.010) of Title 4 of Part 4. If a party then fails to obey
14 an order compelling a response or a further response, the court may
15 make those orders that are just, including the imposition of an issue
16 sanction, an evidence sanction, or a terminating sanction under
17 Chapter 7 (commencing with Section 2023.010) of Title 4 of Part
18 4. In lieu of or in addition to that sanction, the court may impose
19 a monetary sanction under Chapter 7 (commencing with Section
20 2023.010) of Title 4 of Part 4.

21 SEC. 6. Section 94 of the Code of Civil Procedure is amended
22 to read:

23 94. Discovery is permitted only to the extent provided by this
24 section and Section 95. This discovery shall comply with the
25 notice and format requirements of the particular method of
26 discovery, as provided in Title 4 (commencing with Section
27 2016.010) of Part 4. As to each adverse party, a party may use the
28 following forms of discovery:

29 (a) Any combination of 35 of the following:

30 (1) Interrogatories (with no subparts) under Chapter 13
31 (commencing with Section 2030.010) of Title 4 of Part 4.

32 (2) Demands to produce documents or things under Chapter 14
33 (commencing with Section 2031.010) of Title 4 of Part 4.

34 (3) Requests for admission (with no subparts) under Chapter 16
35 (commencing with Section 2033.010) of Title 4 of Part 4.

36 (b) One oral or written deposition under Chapter 9
37 (commencing with Section 2025.010), Chapter 10 (commencing
38 with Section 2026.010), and Chapter 11 (commencing with
39 Section 2028.010) of Title 4 of Part 4.

1 (c) Any party may serve on any person a deposition subpoena
2 duces tecum requiring the person served to mail copies of
3 documents, books or records to the party's counsel at a specified
4 address, along with an affidavit complying with Section 1561 of
5 the Evidence Code.

6 The party who issued the deposition subpoena shall mail a copy
7 of the response to any other party who tenders the reasonable cost
8 of copying it.

9 (d) Physical and mental examinations under Chapter 15
10 (commencing with Section 2032.010) of Title 4 of Part 4.

11 (e) The identity of expert witnesses under Chapter 18
12 (commencing with Section 2034.010) of Title 4 of Part 4.

13 SEC. 7. Section 116.310 of the Code of Civil Procedure is
14 amended to read:

15 116.310. (a) No formal pleading, other than the claim
16 described in Section 116.320 or 116.360, is necessary to initiate a
17 small claims action.

18 (b) The pretrial discovery procedures described in Section
19 2019.010 are not permitted in small claims actions.

20 SEC. 8. Section 116.770 of the Code of Civil Procedure is
21 amended to read:

22 116.770. (a) The appeal to the superior court shall consist of
23 a new hearing before a judicial officer other than the judicial
24 officer who heard the action in the small claims division.

25 (b) The hearing on an appeal to the superior court shall be
26 conducted informally. The pretrial discovery procedures
27 described in Section 2019.010 are not permitted, no party has a
28 right to a trial by jury, and no tentative decision or statement of
29 decision is required.

30 (c) Article 5 (commencing with Section 116.510) on hearings
31 in the small claims court applies in hearings on appeal in the
32 superior court, except that attorneys may participate.

33 (d) The scope of the hearing shall include the claims of all
34 parties who were parties to the small claims action at the time the
35 notice of appeal was filed. The hearing shall include the claim of
36 a defendant that was heard in the small claims court.

37 (e) The clerk of the superior court shall schedule the hearing for
38 the earliest available time and shall mail written notice of the
39 hearing to the parties at least 14 days prior to the time set for the
40 hearing.

1 (f) The Judicial Council may prescribe by rule the practice and
2 procedure on appeal and the time and manner in which the record
3 on appeal shall be prepared and filed.

4 SEC. 9. Section 437c of the Code of Civil Procedure is
5 amended to read:

6 437c. (a) Any party may move for summary judgment in any
7 action or proceeding if it is contended that the action has no merit
8 or that there is no defense to the action or proceeding. The motion
9 may be made at any time after 60 days have elapsed since the
10 general appearance in the action or proceeding of each party
11 against whom the motion is directed or at any earlier time after the
12 general appearance that the court, with or without notice and upon
13 good cause shown, may direct. Notice of the motion and
14 supporting papers shall be served on all other parties to the action
15 at least 75 days before the time appointed for hearing. However,
16 if the notice is served by mail, the required 75-day period of notice
17 shall be increased by five days if the place of address is within the
18 State of California, 10 days if the place of address is outside the
19 State of California but within the United States, and 20 days if the
20 place of address is outside the United States, and if the notice is
21 served by facsimile transmission, Express Mail, or another method
22 of delivery providing for overnight delivery, the required 75-day
23 period of notice shall be increased by two court days. The motion
24 shall be heard no later than 30 days before the date of trial, unless
25 the court for good cause orders otherwise. The filing of the motion
26 shall not extend the time within which a party must otherwise file
27 a responsive pleading.

28 (b) (1) The motion shall be supported by affidavits,
29 declarations, admissions, answers to interrogatories, depositions,
30 and matters of which judicial notice shall or may be taken. The
31 supporting papers shall include a separate statement setting forth
32 plainly and concisely all material facts which the moving party
33 contends are undisputed. Each of the material facts stated shall be
34 followed by a reference to the supporting evidence. The failure to
35 comply with this requirement of a separate statement may in the
36 court's discretion constitute a sufficient ground for denial of the
37 motion.

38 (2) Any opposition to the motion shall be served and filed not
39 less than 14 days preceding the noticed or continued date of
40 hearing, unless the court for good cause orders otherwise. The

1 opposition, where appropriate, shall consist of affidavits,
2 declarations, admissions, answers to interrogatories, depositions,
3 and matters of which judicial notice shall or may be taken.

4 (3) The opposition papers shall include a separate statement
5 that responds to each of the material facts contended by the moving
6 party to be undisputed, indicating whether the opposing party
7 agrees or disagrees that those facts are undisputed. The statement
8 also shall set forth plainly and concisely any other material facts
9 that the opposing party contends are disputed. Each material fact
10 contended by the opposing party to be disputed shall be followed
11 by a reference to the supporting evidence. Failure to comply with
12 this requirement of a separate statement may constitute a sufficient
13 ground, in the court's discretion, for granting the motion.

14 (4) Any reply to the opposition shall be served and filed by the
15 moving party not less than five days preceding the noticed or
16 continued date of hearing, unless the court for good cause orders
17 otherwise.

18 (5) Evidentiary objections not made at the hearing shall be
19 deemed waived.

20 (6) Except for subdivision (c) of Section 1005 relating to the
21 method of service of opposition and reply papers, Sections 1005
22 and 1013, extending the time within which a right may be
23 exercised or an act may be done, do not apply to this section.

24 (7) Any incorporation by reference of matter in the court's file
25 shall set forth with specificity the exact matter to which reference
26 is being made and shall not incorporate the entire file.

27 (c) The motion for summary judgment shall be granted if all the
28 papers submitted show that there is no triable issue as to any
29 material fact and that the moving party is entitled to a judgment as
30 a matter of law. In determining whether the papers show that there
31 is no triable issue as to any material fact the court shall consider
32 all of the evidence set forth in the papers, except that to which
33 objections have been made and sustained by the court, and all
34 inferences reasonably deducible from the evidence, except
35 summary judgment may not be granted by the court based on
36 inferences reasonably deducible from the evidence, if contradicted
37 by other inferences or evidence, which raise a triable issue as to any
38 material fact.

39 (d) Supporting and opposing affidavits or declarations shall be
40 made by any person on personal knowledge, shall set forth

1 admissible evidence, and shall show affirmatively that the affiant
2 is competent to testify to the matters stated in the affidavits or
3 declarations. Any objections based on the failure to comply with
4 the requirements of this subdivision shall be made at the hearing
5 or shall be deemed waived.

6 (e) If a party is otherwise entitled to a summary judgment
7 pursuant to this section, summary judgment may not be denied on
8 grounds of credibility or for want of cross-examination of
9 witnesses furnishing affidavits or declarations in support of the
10 summary judgment, except that summary judgment may be denied
11 in the discretion of the court, where the only proof of a material fact
12 offered in support of the summary judgment is an affidavit or
13 declaration made by an individual who was the sole witness to that
14 fact; or where a material fact is an individual's state of mind, or
15 lack thereof, and that fact is sought to be established solely by the
16 individual's affirmation thereof.

17 (f) (1) A party may move for summary adjudication as to one
18 or more causes of action within an action, one or more affirmative
19 defenses, one or more claims for damages, or one or more issues
20 of duty, if that party contends that the cause of action has no merit
21 or that there is no affirmative defense thereto, or that there is no
22 merit to an affirmative defense as to any cause of action, or both,
23 or that there is no merit to a claim for damages, as specified in
24 Section 3294 of the Civil Code, or that one or more defendants
25 either owed or did not owe a duty to the plaintiff or plaintiffs. A
26 motion for summary adjudication shall be granted only if it
27 completely disposes of a cause of action, an affirmative defense,
28 a claim for damages, or an issue of duty.

29 (2) A motion for summary adjudication may be made by itself
30 or as an alternative to a motion for summary judgment and shall
31 proceed in all procedural respects as a motion for summary
32 judgment. However, a party may not move for summary judgment
33 based on issues asserted in a prior motion for summary
34 adjudication and denied by the court, unless that party establishes
35 to the satisfaction of the court, newly discovered facts or
36 circumstances or a change of law supporting the issues reasserted
37 in the summary judgment motion.

38 (g) Upon the denial of a motion for summary judgment, on the
39 ground that there is a triable issue as to one or more material facts,
40 the court shall, by written or oral order, specify one or more

1 material facts raised by the motion as to which the court has
2 determined there exists a triable controversy. This determination
3 shall specifically refer to the evidence proffered in support of and
4 in opposition to the motion which indicates that a triable
5 controversy exists. Upon the grant of a motion for summary
6 judgment, on the ground that there is no triable issue of material
7 fact, the court shall, by written or oral order, specify the reasons
8 for its determination. The order shall specifically refer to the
9 evidence proffered in support of, and if applicable in opposition to,
10 the motion which indicates that no triable issue exists. The court
11 shall also state its reasons for any other determination. The court
12 shall record its determination by court reporter or written order.

13 (h) If it appears from the affidavits submitted in opposition to
14 a motion for summary judgment or summary adjudication or both
15 that facts essential to justify opposition may exist but cannot, for
16 reasons stated, then be presented, the court shall deny the motion,
17 or order a continuance to permit affidavits to be obtained or
18 discovery to be had or may make any other order as may be just.
19 The application to continue the motion to obtain necessary
20 discovery may also be made by ex parte motion at any time on or
21 before the date the opposition response to the motion is due.

22 (i) If, after granting a continuance to allow specified additional
23 discovery, the court determines that the party seeking summary
24 judgment has unreasonably failed to allow the discovery to be
25 conducted, the court shall grant a continuance to permit the
26 discovery to go forward or deny the motion for summary judgment
27 or summary adjudication. This section does not affect or limit the
28 ability of any party to compel discovery under the Civil Discovery
29 Act (Title 4 (commencing with Section 2016.010) of Part 4).

30 (j) If the court determines at any time that any of the affidavits
31 are presented in bad faith or solely for purposes of delay, the court
32 shall order the party presenting the affidavits to pay the other party
33 the amount of the reasonable expenses which the filing of the
34 affidavits caused the other party to incur. Sanctions may not be
35 imposed pursuant to this subdivision, except on notice contained
36 in a party's papers, or on the court's own noticed motion, and after
37 an opportunity to be heard.

38 (k) Except when a separate judgment may properly be awarded
39 in the action, no final judgment may be entered on a motion for
40 summary judgment prior to the termination of the action, but the



final judgment shall, in addition to any matters determined in the action, award judgment as established by the summary proceeding herein provided for.

(l) In actions which arise out of an injury to the person or to property, if a motion for summary judgment was granted on the basis that the defendant was without fault, no other defendant during trial, over plaintiff's objection, may attempt to attribute fault to or comment on the absence or involvement of the defendant who was granted the motion.

(m) (1) A summary judgment entered under this section is an appealable judgment as in other cases. Upon entry of any order pursuant to this section, except the entry of summary judgment, a party may, within 20 days after service upon him or her of a written notice of entry of the order, petition an appropriate reviewing court for a peremptory writ. If the notice is served by mail, the initial period within which to file the petition shall be increased by five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. If the notice is served by facsimile transmission, Express Mail, or another method of delivery providing for overnight delivery, the initial period within which to file the petition shall be increased by two court days. The superior court may, for good cause, and prior to the expiration of the initial period, extend the time for one additional period not to exceed 10 days.

(2) Before a reviewing court affirms an order granting summary judgment or summary adjudication on a ground not relied upon by the trial court, the reviewing court shall afford the parties an opportunity to present their views on the issue by submitting supplemental briefs. The supplemental briefing may include an argument that additional evidence relating to that ground exists, but that the party has not had an adequate opportunity to present the evidence or to conduct discovery on the issue. The court may reverse or remand based upon the supplemental briefing to allow the parties to present additional evidence or to conduct discovery on the issue. If the court fails to allow supplemental briefing, a rehearing shall be ordered upon timely petition of any party.

(n) (1) If a motion for summary adjudication is granted, at the trial of the action, the cause or causes of action within the action, affirmative defense or defenses, claim for damages, or issue or issues of duty as to the motion which has been granted shall be deemed to be established and the action shall proceed as to the cause or causes of action, affirmative defense or defenses, claim for damages, or issue or issues of duty remaining.

(2) In the trial of the action, the fact that a motion for summary adjudication is granted as to one or more causes of action, affirmative defenses, claims for damages, or issues of duty within the action shall not operate to bar any cause of action, affirmative defense, claim for damages, or issue of duty as to which summary adjudication was either not sought or denied.

(3) In the trial of an action, neither a party, nor a witness, nor the court shall comment upon the grant or denial of a motion for summary adjudication to a jury.

(o) A cause of action has no merit if either of the following exists:

(1) One or more of the elements of the cause of action cannot be separately established, even if that element is separately pleaded.

(2) A defendant establishes an affirmative defense to that cause of action.

(p) For purposes of motions for summary judgment and summary adjudication:

(1) A plaintiff or cross-complainant has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on that cause of action. Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The defendant or cross-defendant may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.

(2) A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action, even if not

1 separately pleaded, cannot be established, or that there is a
2 complete defense to that cause of action. Once the defendant or
3 cross-defendant has met that burden, the burden shifts to the
4 plaintiff or cross-complainant to show that a triable issue of one or
5 more material facts exists as to that cause of action or a defense
6 thereto. The plaintiff or cross-complainant may not rely upon the
7 mere allegations or denials of its pleadings to show that a triable
8 issue of material fact exists but, instead, shall set forth the specific
9 facts showing that a triable issue of material fact exists as to that
10 cause of action or a defense thereto.

11 (q) This section does not extend the period for trial provided by
12 Section 1170.5.

13 (r) Subdivisions (a) and (b) do not apply to actions brought
14 pursuant to Chapter 4 (commencing with Section 1159) of Title 3
15 of Part 3.

16 (s) For the purposes of this section, a change in law does not
17 include a later enacted statute without retroactive application.

18 SEC. 10. Section 485.230 of the Code of Civil Procedure is
19 amended to read:

20 485.230. Where a right to attach order has been issued by the
21 court, a plaintiff may discover, through any means provided for by,
22 and subject to the protections included in, Title 4 (commencing
23 with Section 2016.010) of Part 4, the identity, location, and value
24 of property in which the defendant has an interest.

25 SEC. 11. Section 708.020 of the Code of Civil Procedure is
26 amended to read:

27 708.020. (a) The judgment creditor may propound written
28 interrogatories to the judgment debtor, in the manner provided in
29 Chapter 13 (commencing with Section 2030.010) of Title 4 of Part
30 4, requesting information to aid in enforcement of the money
31 judgment. The judgment debtor shall answer the interrogatories in
32 the manner and within the time provided by Chapter 13
33 (commencing with Section 2030.010) of Title 4 of Part 4.

34 (b) The judgment creditor may not serve interrogatories
35 pursuant to this section within 120 days after the judgment debtor
36 has responded to interrogatories previously served pursuant to this
37 section or within 120 days after the judgment debtor has been
38 examined pursuant to Article 2 (commencing with Section
39 708.110), and the judgment debtor is not required to respond to any
40 interrogatories so served.

1 (c) Interrogatories served pursuant to this section may be
2 enforced, to the extent practicable, in the same manner as
3 interrogatories in a civil action.

4 (d) The limitation provided by Chapter 13 (commencing with
5 Section 2030.010) of Title 4 of Part 4 on the number of
6 interrogatories that may be propounded applies to each set of
7 interrogatories propounded from time to time pursuant to this
8 section, but does not apply cumulatively to interrogatories
9 propounded by the judgment creditor to the judgment debtor.

10 SEC. 12. Section 708.030 of the Code of Civil Procedure is
11 amended to read:

12 708.030. (a) The judgment creditor may demand that any
13 judgment debtor produce and permit the party making the demand,
14 or someone acting on that party's behalf, to inspect and to copy a
15 document that is in the possession, custody, or control of the party
16 on whom the demand is made in the manner provided in Chapter
17 14 (commencing with Section 2031.010) of Title 4 of Part 4, if the
18 demand requests information to aid in enforcement of the money
19 judgment. The judgment debtor shall respond and comply with the
20 demand in the manner and within the time provided by Chapter 14
21 (commencing with Section 2031.010) of Title 4 of Part 4.

22 (b) The judgment creditor may not serve interrogatories or
23 inspection demands pursuant to this section or Section 708.020
24 within 120 days after the judgment debtor has responded to the
25 interrogatories or demands previously served pursuant to this
26 section or Section 708.020, or within 120 days after the judgment
27 debtor has been examined pursuant to Article 2 (commencing with
28 Section 708.110), and the judgment debtor is not required to
29 respond to any discovery so served.

30 (c) Inspection demands served pursuant to this section may be
31 enforced to the extent practicable, in the same manner as
32 inspection demands in a civil action.

33 SEC. 13. Section 1005 of the Code of Civil Procedure is
34 amended to read:

35 1005. (a) Written notice shall be given, as prescribed in
36 subdivisions (b) and (c), for the following motions:

37 (1) Notice of Application and Hearing for Writ of Attachment
38 under Section 484.040.

39 (2) Notice of Application and Hearing for Claim and Delivery
40 under Section 512.030.

1 (3) Notice of Hearing for Claim of Exemption under Section
2 706.105.

3 (4) Motion to Quash Summons pursuant to subdivision (b) of
4 Section 418.10.

5 (5) Motion for Determination of Good Faith Settlement
6 pursuant to Section 877.6.

7 (6) Hearing for Discovery of Peace Officer Personnel Records
8 pursuant to Section 1043 of the Evidence Code.

9 (7) Notice of Hearing of Third-Party Claim pursuant to Section
10 720.320.

11 (8) Motion for an Order to Attend Deposition more than 150
12 miles from deponent's residence pursuant to Section 2025.260.

13 (9) Notice of Hearing of Application for Relief pursuant to
14 Section 946.6 of the Government Code.

15 (10) Motion to Set Aside Default or Default Judgment and for
16 Leave to Defend Actions pursuant to Section 473.5.

17 (11) Motion to Expunge Notice of Pendency of Action
18 pursuant to Section 405.30.

19 (12) Motion to Set Aside Default and for Leave to Amend
20 pursuant to Section 585.5.

21 (13) Any other proceeding under this code in which notice is
22 required and no other time or method is prescribed by law or by
23 court or judge.

24 (b) Unless otherwise ordered or specifically provided by law,
25 all moving and supporting papers shall be served and filed at least
26 21 calendar days before the hearing. The moving and supporting
27 papers served shall be a copy of the papers filed or to be filed with
28 the court. However, if the notice is served by mail, the required
29 21-day period of notice before the hearing shall be increased by
30 five calendar days if the place of mailing and the place of address
31 are within the State of California, 10 calendar days if either the
32 place of mailing or the place of address is outside the State of
33 California but within the United States, and 20 calendar days if
34 either the place of mailing or the place of address is outside the
35 United States, and if the notice is served by facsimile transmission,
36 express mail, or another method of delivery providing for
37 overnight delivery, the required 21-day period of notice before the
38 hearing shall be increased by two calendar days. Section 1013,
39 which extends the time within which a right may be exercised or
40 an act may be done, does not apply to a notice of motion, papers

opposing a motion, or reply papers governed by this section. All papers opposing a motion so noticed shall be filed with the court and a copy served on each party at least 10 calendar days, and all reply papers at least five calendar days before the hearing.

The court, or a judge thereof, may prescribe a shorter time.

(c) Notwithstanding any other provision of this section, all papers opposing a motion and all reply papers shall be served by personal delivery, facsimile transmission, express mail, or other means consistent with Sections 1010, 1011, 1012, and 1013, and reasonably calculated to ensure delivery to the other party or parties not later than the close of the next business day after the time the opposing papers or reply papers, as applicable, are filed. This subdivision applies to the service of opposition and reply papers regarding motions for summary judgment or summary adjudication, in addition to the motions listed in subdivision (a).

The court, or a judge thereof, may prescribe a shorter time.

SEC. 14. Section 1141.16 of the Code of Civil Procedure is amended to read:

1141.16. (a) The determination of the amount in controversy, under subdivision (a) or (b) of Section 1141.11, shall be made by the court and the case referred to arbitration after all named parties have appeared or defaulted. The determination shall be made at a case management conference or based upon review of the written submissions of the parties, as provided in rules adopted by the Judicial Council. The determination shall be based on the total amount of damages, and the judge may not consider questions of liability or comparative negligence or any other defense. At that time the court shall also make a determination whether any prayer for equitable relief is frivolous or insubstantial. The determination of the amount in controversy and whether any prayer for equitable relief is frivolous or insubstantial may not be appealable. No determination pursuant to this section shall be made if all parties stipulate in writing that the amount in controversy exceeds the amount specified in Section 1141.11.

(b) The determination and any stipulation of the amount in controversy shall be without prejudice to any finding on the value of the case by an arbitrator or in a subsequent trial de novo.

(c) Except as provided in this section, the arbitration hearing may not be held until 210 days after the filing of the complaint, or 240 days after the filing of a complaint if the parties have stipulated

1 to a continuance pursuant to subdivision (d) of Section 68616 of
2 the Government Code. A case shall be submitted to arbitration at
3 an earlier time upon any of the following:

4 (1) The stipulation of the parties to an earlier arbitration
5 hearing.

6 (2) The written request of all plaintiffs, subject to a motion by
7 a defendant for good cause shown to delay the arbitration hearing.

8 (3) An order of the court if the parties have stipulated, or the
9 court has ordered under Section 1141.24, that discovery other than
10 that permitted under Chapter 18 (commencing with Section
11 2034.010) of Title 4 of Part 4 will be permitted after the arbitration
12 award is rendered.

13 SEC. 15. Section 1141.24 of the Code of Civil Procedure is
14 amended to read:

15 1141.24. In cases ordered to arbitration pursuant to Section
16 1141.11, no discovery other than that permitted by Chapter 18
17 (commencing with Section 2034.010) of Title 4 of Part 4 is
18 permissible after an arbitration award except by stipulation of the
19 parties or by leave of court upon a showing of good cause.

20 SEC. 16. Section 1283.05 of the Code of Civil Procedure is
21 amended to read:

22 1283.05. To the extent provided in Section 1283.1 depositions
23 may be taken and discovery obtained in arbitration proceedings as
24 follows:

25 (a) After the appointment of the arbitrator or arbitrators, the
26 parties to the arbitration shall have the right to take depositions and
27 to obtain discovery regarding the subject matter of the arbitration,
28 and, to that end, to use and exercise all of the same rights, remedies,
29 and procedures, and be subject to all of the same duties, liabilities,
30 and obligations in the arbitration with respect to the subject matter
31 thereof, as provided in Chapter 2 (commencing with Section 1985)
32 of Title 3 of Part 4, and in Title 4 (commencing with Section
33 2016.010) of Part 4, as if the subject matter of the arbitration were
34 pending before a superior court of this state in a civil action other
35 than a limited civil case, subject to the limitations as to depositions
36 set forth in subdivision (e) of this section.

37 (b) The arbitrator or arbitrators themselves shall have power,
38 in addition to the power of determining the merits of the
39 arbitration, to enforce the rights, remedies, procedures, duties,
40 liabilities, and obligations of discovery by the imposition of the

1 same terms, conditions, consequences, liabilities, sanctions, and
2 penalties as can be or may be imposed in like circumstances in a
3 civil action by a superior court of this state under the provisions of
4 this code, except the power to order the arrest or imprisonment of
5 a person.

6 (c) The arbitrator or arbitrators may consider, determine, and
7 make such orders imposing such terms, conditions, consequences,
8 liabilities, sanctions, and penalties, whenever necessary or
9 appropriate at any time or stage in the course of the arbitration, and
10 such orders shall be as conclusive, final, and enforceable as an
11 arbitration award on the merits, if the making of any such order
12 that is equivalent to an award or correction of an award is subject
13 to the same conditions, if any, as are applicable to the making of
14 an award or correction of an award.

15 (d) For the purpose of enforcing the duty to make discovery, to
16 produce evidence or information, including books and records,
17 and to produce persons to testify at a deposition or at a hearing, and
18 to impose terms, conditions, consequences, liabilities, sanctions,
19 and penalties upon a party for violation of any such duty, such
20 party shall be deemed to include every affiliate of such party as
21 defined in this section. For such purpose:

22 (1) The personnel of every such affiliate shall be deemed to be
23 the officers, directors, managing agents, agents, and employees of
24 such party to the same degree as each of them, respectively, bears
25 such status to such affiliate; and

26 (2) The files, books, and records of every such affiliate shall be
27 deemed to be in the possession and control of, and capable of
28 production by, such party. As used in this section, “affiliate” of the
29 party to the arbitration means and includes any party or person for
30 whose immediate benefit the action or proceeding is prosecuted or
31 defended, or an officer, director, superintendent, member, agent,
32 employee, or managing agent of such party or person.

33 (e) Depositions for discovery shall not be taken unless leave to
34 do so is first granted by the arbitrator or arbitrators.

35 SEC. 17. Section 1775.11 of the Code of Civil Procedure is
36 amended to read:

37 1775.11. Any party who participates in mediation pursuant to
38 Section 1775.3 shall retain the right to obtain discovery to the
39 extent available under the Civil Discovery Act, Title 4
40 (commencing with Section 2016.010) of Part 4.

SEC. 18. Section 1985.3 of the Code of Civil Procedure is amended to read:

1985.3. (a) For purposes of this section, the following definitions apply:

(1) “Personal records” means the original, any copy of books, documents, other writings, or electronic data pertaining to a consumer and which are maintained by any “witness” which is a physician, dentist, ophthalmologist, optometrist, chiropractor, physical therapist, acupuncturist, podiatrist, veterinarian, veterinary hospital, veterinary clinic, pharmacist, pharmacy, hospital, medical center, clinic, radiology or MRI center, clinical or diagnostic laboratory, state or national bank, state or federal association (as defined in Section 5102 of the Financial Code), state or federal credit union, trust company, anyone authorized by this state to make or arrange loans that are secured by real property, security brokerage firm, insurance company, title insurance company, underwritten title company, escrow agent licensed pursuant to Division 6 (commencing with Section 17000) of the Financial Code or exempt from licensure pursuant to Section 17006 of the Financial Code, attorney, accountant, institution of the Farm Credit System, as specified in Section 2002 of Title 12 of the United States Code, or telephone corporation which is a public utility, as defined in Section 216 of the Public Utilities Code, or psychotherapist, as defined in Section 1010 of the Evidence Code, or a private or public preschool, elementary school, secondary school, or postsecondary school as described in Section 76244 of the Education Code.

(2) “Consumer” means any individual, partnership of five or fewer persons, association, or trust which has transacted business with, or has used the services of, the witness or for whom the witness has acted as agent or fiduciary.

(3) “Subpoenaing party” means the person or persons causing a subpoena duces tecum to be issued or served in connection with any civil action or proceeding pursuant to this code, but shall not include the state or local agencies described in Section 7465 of the Government Code, or any entity provided for under Article VI of the California Constitution in any proceeding maintained before an adjudicative body of that entity pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

1 (4) “Deposition officer” means a person who meets the
2 qualifications specified in Section 2020.420.

3 (b) Prior to the date called for in the subpoena duces tecum for
4 the production of personal records, the subpoenaing party shall
5 serve or cause to be served on the consumer whose records are
6 being sought a copy of the subpoena duces tecum, of the affidavit
7 supporting the issuance of the subpoena, if any, and of the notice
8 described in subdivision (e), and proof of service as indicated in
9 paragraph (1) of subdivision (c). This service shall be made as
10 follows:

11 (1) To the consumer personally, or at his or her last known
12 address, or in accordance with Chapter 5 (commencing with
13 Section 1010) of Title 14 of Part 3, or, if he or she is a party, to his
14 or her attorney of record. If the consumer is a minor, service shall
15 be made on the minor’s parent, guardian, conservator, or similar
16 fiduciary, or if one of them cannot be located with reasonable
17 diligence, then service shall be made on any person having the care
18 or control of the minor or with whom the minor resides or by whom
19 the minor is employed, and on the minor if the minor is at least 12
20 years of age.

21 (2) Not less than 10 days prior to the date for production
22 specified in the subpoena duces tecum, plus the additional time
23 provided by Section 1013 if service is by mail.

24 (3) At least five days prior to service upon the custodian of the
25 records, plus the additional time provided by Section 1013 if
26 service is by mail.

27 (c) Prior to the production of the records, the subpoenaing party
28 shall do either of the following:

29 (1) Serve or cause to be served upon the witness a proof of
30 personal service or of service by mail attesting to compliance with
31 subdivision (b).

32 (2) Furnish the witness a written authorization to release the
33 records signed by the consumer or by his or her attorney of record.
34 The witness may presume that any attorney purporting to sign the
35 authorization on behalf of the consumer acted with the consent of
36 the consumer, and that any objection to release of records is
37 waived.

38 (d) A subpoena duces tecum for the production of personal
39 records shall be served in sufficient time to allow the witness a

1 reasonable time, as provided in Section 2020.410, to locate and
2 produce the records or copies thereof.

3 (e) Every copy of the subpoena duces tecum and affidavit, if
4 any, served on a consumer or his or her attorney in accordance with
5 subdivision (b) shall be accompanied by a notice, in a typeface
6 designed to call attention to the notice, indicating that (1) records
7 about the consumer are being sought from the witness named on
8 the subpoena; (2) if the consumer objects to the witness furnishing
9 the records to the party seeking the records, the consumer must file
10 papers with the court or serve a written objection as provided in
11 subdivision (g) prior to the date specified for production on the
12 subpoena; and (3) if the party who is seeking the records will not
13 agree in writing to cancel or limit the subpoena, an attorney should
14 be consulted about the consumer's interest in protecting his or her
15 rights of privacy. If a notice of taking of deposition is also served,
16 that other notice may be set forth in a single document with the
17 notice required by this subdivision.

18 (f) A subpoena duces tecum for personal records maintained by
19 a telephone corporation which is a public utility, as defined in
20 Section 216 of the Public Utilities Code, shall not be valid or
21 effective unless it includes a consent to release, signed by the
22 consumer whose records are requested, as required by Section
23 2891 of the Public Utilities Code.

24 (g) Any consumer whose personal records are sought by a
25 subpoena duces tecum and who is a party to the civil action in
26 which this subpoena duces tecum is served may, prior to the date
27 for production, bring a motion under Section 1987.1 to quash or
28 modify the subpoena duces tecum. Notice of the bringing of that
29 motion shall be given to the witness and deposition officer at least
30 five days prior to production. The failure to provide notice to the
31 deposition officer shall not invalidate the motion to quash or
32 modify the subpoena duces tecum but may be raised by the
33 deposition officer as an affirmative defense in any action for
34 liability for improper release of records.

35 Any other consumer or nonparty whose personal records are
36 sought by a subpoena duces tecum may, prior to the date of
37 production, serve on the subpoenaing party the witness, and the
38 deposition officer, a written objection that cites the specific
39 grounds on which production of the personal records should be
40 prohibited.

1 No witness or deposition officer shall be required to produce
2 personal records after receipt of notice that the motion has been
3 brought by consumer, or after receipt of a written objection from
4 a nonparty consumer, except upon order of the court in which the
5 action is pending or by agreement of the parties, witnesses, and
6 consumers affected.

7 The party requesting a consumer's personal records may bring
8 a motion under Section 1987.1 to enforce the subpoena within 20
9 days of service of the written objection. The motion shall be
10 accompanied by a declaration showing a reasonable and good faith
11 attempt at informal resolution of the dispute between the party
12 requesting the personal records and the consumer or the
13 consumer's attorney.

14 (h) Upon good cause shown and provided that the rights of
15 witnesses and consumers are preserved, a subpoenaing party shall
16 be entitled to obtain an order shortening the time for service of a
17 subpoena duces tecum or waiving the requirements of subdivision
18 (b) where due diligence by the subpoenaing party has been shown.

19 (i) Nothing contained in this section shall be construed to apply
20 to any subpoena duces tecum which does not request the records
21 of any particular consumer or consumers and which requires a
22 custodian of records to delete all information which would in any
23 way identify any consumer whose records are to be produced.

24 (j) This section shall not apply to proceedings conducted under
25 Division 1 (commencing with Section 50), Division 4
26 (commencing with Section 3200), Division 4.5 (commencing with
27 Section 6100), or Division 4.7 (commencing with Section 6200)
28 of the Labor Code.

29 (k) Failure to comply with this section shall be sufficient basis
30 for the witness to refuse to produce the personal records sought by
31 a subpoena duces tecum.

32 SEC. 19. Section 1985.6 of the Code of Civil Procedure is
33 amended to read:

34 1985.6. (a) For purposes of this section, the following
35 definitions apply:

36 (1) "Employment records" means the original or any copy of
37 books, documents, other writings, or electronic data pertaining to
38 the employment of any employee maintained by the current or
39 former employer of the employee.



1 (2) “Employee” means any individual who is or has been
2 employed by a witness subject to a subpoena duces tecum.

3 (3) “Subpoenaing party” means the person or persons causing
4 a subpoena duces tecum to be issued or served in connection with
5 any civil action or proceeding, but shall not include the state or
6 local agencies described in Section 7465 of the Government Code,
7 or any entity provided for under Article VI of the California
8 Constitution in any proceeding maintained before an adjudicative
9 body of that entity pursuant to Chapter 4 (commencing with
10 Section 6000) of Division 3 of the Business and Professions Code.

11 (4) “Deposition officer” means a person who meets the
12 qualifications specified in Section 2020.420.

13 (b) Prior to the date called for in the subpoena duces tecum of
14 the production of employment records, the subpoenaing party
15 shall serve or cause to be served on the employee whose records
16 are being sought a copy of: the subpoena duces tecum; the affidavit
17 supporting the issuance of the subpoena, if any; and the notice
18 described in subdivision (e), and proof of service as provided in
19 paragraph (1) of subdivision (c). This service shall be made as
20 follows:

21 (1) To the employee personally, or at his or her last known
22 address, or in accordance with Chapter 5 (commencing with
23 Section 1010) of Title 14 of Part 3, or, if he or she is a party, to his
24 or her attorney of record. If the employee is a minor, service shall
25 be made on the minor’s parent, guardian, conservator, or similar
26 fiduciary, or if one of them cannot be located with reasonable
27 diligence, then service shall be made on any person having the care
28 or control of the minor, or with whom the minor resides, and on
29 the minor if the minor is at least 12 years of age.

30 (2) Not less than 10 days prior to the date for production
31 specified in the subpoena duces tecum, plus the additional time
32 provided by Section 1013 if service is by mail.

33 (3) At least five days prior to service upon the custodian of the
34 employment records, plus the additional time provided by Section
35 1013 if service is by mail.

36 (c) Prior to the production of the records, the subpoenaing party
37 shall either:

38 (1) Serve or cause to be served upon the witness a proof of
39 personal service or of service by mail attesting to compliance with
40 subdivision (b).

1 (2) Furnish the witness a written authorization to release the
2 records signed by the employee or by his or her attorney of record.
3 The witness may presume that the attorney purporting to sign the
4 authorization on behalf of the employee acted with the consent of
5 the employee, and that any objection to release of records is
6 waived.

7 (d) A subpoena duces tecum for the production of employment
8 records shall be served in sufficient time to allow the witness a
9 reasonable time, as provided in Section 2020.410, to locate and
10 produce the records or copies thereof.

11 (e) Every copy of the subpoena duces tecum and affidavit
12 served on an employee or his or her attorney in accordance with
13 subdivision (b) shall be accompanied by a notice, in a typeface
14 designed to call attention to the notice, indicating that (1)
15 employment records about the employee are being sought from the
16 witness named on the subpoena; (2) the employment records may
17 be protected by a right of privacy; (3) if the employee objects to
18 the witness furnishing the records to the party seeking the records
19 the employee shall file papers with the court prior to the date
20 specified for production on the subpoena; and (4) if the
21 subpoenaing party does not agree in writing to cancel or limit the
22 subpoena, an attorney should be consulted about the employee's
23 interest in protecting his or her rights of privacy. If a notice of
24 taking of deposition is also served, that other notice may be set
25 forth in a single document with the notice required by this
26 subdivision.

27 (f) Any employee whose employment records are sought by a
28 subpoena duces tecum may, prior to the date for production, bring
29 a motion under Section 1987.1 to quash or modify the subpoena
30 duces tecum. Notice of the bringing of that motion shall be given
31 to the witness and the deposition officer at least five days prior to
32 production. The failure to provide notice to the deposition officer
33 shall not invalidate the motion to quash or modify the subpoena
34 duces tecum but may be raised by the deposition officer as an
35 affirmative defense in any action for liability for improper release
36 of records.

37 Any nonparty employee whose employment records are sought
38 by a subpoena duces tecum may, prior to the date of production,
39 serve on the subpoenaing party, and the deposition officer, the

1 witness a written objection that cites the specific grounds on which
2 production of the employment records should be prohibited.

3 No witness or deposition officer shall be required to produce
4 employment records after receipt of notice that the motion has
5 been brought by an employee, or after receipt of a written
6 objection from a nonparty employee, except upon order of the
7 court in which the action is pending or by agreement of the parties,
8 witnesses, and employees affected.

9 The party requesting an employee's employment records may
10 bring a motion under subdivision (c) of Section 1987 to enforce the
11 subpoena within 20 days of service of the written objection. The
12 motion shall be accompanied by a declaration showing a
13 reasonable and good faith attempt at informal resolution of the
14 dispute between the party requesting the employment records and
15 the employee or the employee's attorney.

16 (g) Upon good cause shown and provided that the rights of
17 witness and employees are preserved, a subpoenaing party shall be
18 entitled to obtain an order shortening the time for service of a
19 subpoena duces tecum or waiving the requirements of subdivision
20 (b) where due diligence by the subpoenaing party has been shown.

21 (h) Nothing contained in this section shall be construed to apply
22 to any subpoena duces tecum which does not request the records
23 of any particular employee or employees and which requires a
24 custodian of records to delete all information which would in any
25 way identify any employee whose records are to be produced.

26 (i) This section shall not apply to proceedings conducted under
27 Division 1 (commencing with Section 50), Division 4
28 (commencing with Section 3200), Division 4.5 (commencing with
29 Section 6100), or Division 4.7 (commencing with Section 6200)
30 of the Labor Code.

31 (j) Failure to comply with this section shall be sufficient basis
32 for the witness to refuse to produce the employment records sought
33 by subpoena duces tecum.

34 SEC. 20. Section 1987.5 of the Code of Civil Procedure is
35 amended to read:

36 1987.5. The service of a subpoena duces tecum is invalid
37 unless at the time of such service a copy of the affidavit upon which
38 the subpoena is based is served on the person served with the
39 subpoena. In the case of a subpoena duces tecum which requires
40 appearance and the production of matters and things at the taking

1 of a deposition, the subpoena shall not be valid unless a copy of the
2 affidavit upon which the subpoena is based and the designation of
3 the materials to be produced, as set forth in the subpoena, is
4 attached to the notice of taking the deposition served upon each
5 party or its attorney as provided in Chapter 3 (commencing with
6 Section 2002) and in Title 4 (commencing with Section 2016.010).
7 If matters and things are produced pursuant to a subpoena duces
8 tecum in violation of this section, any other party to the action may
9 file a motion for, and the court may grant, an order providing
10 appropriate relief, including, but not limited to, exclusion of the
11 evidence affected by the violation, a retaking of the deposition
12 notwithstanding any other limitation on discovery proceedings, or
13 a continuance. The party causing the subpoena to be served shall
14 retain the original affidavit until final judgment in the action, and
15 shall file the affidavit with the court only upon reasonable request
16 by any party or witness affected thereby. This section does not
17 apply to deposition subpoenas commanding only the production
18 of business records for copying under Article 4 (commencing with
19 Section 2020.410) of Chapter 6 of Title 4.

20 SEC. 21. Section 1991.1 of the Code of Civil Procedure is
21 amended to read:

22 1991.1. Disobedience to a subpoena requiring attendance of
23 a witness before an officer out of court in a deposition taken
24 pursuant to Title 4 (commencing with Section 2016.010), or
25 refusal to be sworn as a witness at that deposition, may be punished
26 as contempt, as provided in subdivision (e) of Section 2023.030,
27 without the necessity of a prior order of court directing compliance
28 by the witness.

29 SEC. 22. Article 3 (commencing with Section 2016) of
30 Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure is
31 repealed.

32 SEC. 23. Title 4 (commencing with Section 2016.010) is
33 added to Part 4 of the Code of Civil Procedure, to read:

34
35 TITLE 4. CIVIL DISCOVERY ACT

36
37 CHAPTER 1. GENERAL PROVISIONS

38
39 2016.010. This title may be cited as the “Civil Discovery
40 Act.”

2016.020. As used in this title:

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

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

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

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

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

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

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

2016.070. This title applies to discovery in aid of enforcement of a money judgment only to the extent provided in Article 1 (commencing with Section 708.010) of Chapter 6 of Title 9 of Part 2.

CHAPTER 2. SCOPE OF DISCOVERY

Article 1. General Provisions

2017.010. Unless otherwise limited by order of the court in accordance with this title, 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,

1 and location of any document, tangible thing, or land or other
2 property.

3 2017.020. (a) The court shall limit the scope of discovery if
4 it determines that the burden, expense, or intrusiveness of that
5 discovery clearly outweighs the likelihood that the information
6 sought will lead to the discovery of admissible evidence. The court
7 may make this determination pursuant to a motion for protective
8 order by a party or other affected person. This motion shall be
9 accompanied by a meet and confer declaration under Section
10 2016.040.

11 (b) The court shall impose a monetary sanction under Chapter
12 7 (commencing with Section 2023.010) against any party, person,
13 or attorney who unsuccessfully makes or opposes a motion for a
14 protective order, unless it finds that the one subject to the sanction
15 acted with substantial justification or that other circumstances
16 make the imposition of the sanction unjust.

17
18 Article 2. Scope of Discovery in Specific Contexts
19

20 2017.210. A party may obtain discovery of the existence and
21 contents of any agreement under which any insurance carrier may
22 be liable to satisfy in whole or in part a judgment that may be
23 entered in the action or to indemnify or reimburse for payments
24 made to satisfy the judgment. This discovery may include the
25 identity of the carrier and the nature and limits of the coverage. A
26 party may also obtain discovery as to whether that insurance
27 carrier is disputing the agreement's coverage of the claim involved
28 in the action, but not as to the nature and substance of that dispute.
29 Information concerning the insurance agreement is not by reason
30 of disclosure admissible in evidence at trial.

31 2017.220. (a) In any civil action alleging conduct that
32 constitutes sexual harassment, sexual assault, or sexual battery,
33 any party seeking discovery concerning the plaintiff's sexual
34 conduct with individuals other than the alleged perpetrator shall
35 establish specific facts showing that there is good cause for that
36 discovery, and that the matter sought to be discovered is relevant
37 to the subject matter of the action and reasonably calculated to lead
38 to the discovery of admissible evidence. This showing shall be
39 made by a noticed motion, accompanied by a meet and confer

1 declaration under Section 2016.040, and shall not be made or
2 considered by the court at an ex parte hearing.

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

9
10 Article 3. Violation of the Elder Abuse and Dependent Adult
11 Civil Protection Act
12

13 2017.310. (a) Notwithstanding any other provision of law, it
14 is the policy of the State of California that confidential settlement
15 agreements are disfavored in any civil action the factual
16 foundation for which establishes a cause of action for a violation
17 of the Elder Abuse and Dependent Adult Civil Protection Act
18 (Chapter 11(commencing with Section 15600) of Part 3 of
19 Division 9 of the Welfare and Institutions Code).

20 (b) Provisions of a confidential settlement agreement
21 described in subdivision (a) may not be recognized or enforced by
22 the court absent a showing of any of the following:

23 (1) The information is privileged under existing law.

24 (2) The information is not evidence of abuse of an elder or
25 dependent adult, as described in Sections 15610.30, 15610.57, and
26 15610.63 of the Welfare and Institutions Code.

27 (3) The party seeking to uphold the confidentiality of the
28 information has demonstrated that there is a substantial probability
29 that prejudice will result from the disclosure and that the party's
30 interest in the information cannot be adequately protected through
31 redaction.

32 (c) Nothing in paragraph (1), (2), or (3) of subdivision (b)
33 permits the sealing or redacting of a defendant's name in any
34 information made available to the public.

35 (d) Except as expressly provided in this section, nothing in this
36 section is intended to alter, modify, or amend existing law.

37 (e) Nothing in this section may be deemed to prohibit the entry
38 or enforcement of that part of a confidentiality agreement,
39 settlement agreement, or stipulated agreement between the parties

1 that requires the nondisclosure of the amount of any money paid
2 in a settlement of a claim.

3 (f) Nothing in this section applies to or affects an action for
4 professional negligence against a health care provider.

5 2017.320. (a) In any civil action the factual foundation for
6 which establishes a cause of action for a violation of the Elder
7 Abuse and Dependent Adult Civil Protection Act (Chapter 11
8 (commencing with Section 15600) of Part 3 of Division 9 of the
9 Welfare and Institutions Code), any information that is acquired
10 through discovery and is protected from disclosure by a stipulated
11 protective order shall remain subject to the protective order, except
12 for information that is evidence of abuse of an elder or dependent
13 adult as described in Sections 15610.30, 15610.57, and 15610.63
14 of the Welfare and Institutions Code.

15 (b) In that instance, after redacting information in the
16 document that is not evidence of abuse of an elder or dependent
17 adult as described in Sections 15610.30, 15610.57, and 15610.63
18 of the Welfare and Institutions Code, a party may file that
19 particularized information with the court. The party proposing to
20 file the information shall offer to meet and confer with the party
21 from whom the information was obtained at least one week prior
22 to filing that information with the court.

23 (c) The filing party shall give concurrent notice of the filing
24 with the court and its basis to the party from whom the information
25 was obtained.

26 (d) Any filed information submitted to the court shall remain
27 confidential under any protective order for 30 days after the filing
28 and shall be part of the public court record thereafter, unless an
29 affected party petitions the court and shows good cause for a court
30 protective order.

31 (e) The burden of showing good cause shall be on the party
32 seeking the court protective order.

33 (f) A stipulated protective order may not be recognized or
34 enforced by the court to prevent disclosure of information filed
35 with the court pursuant to subdivision (b), absent a showing of any
36 of the following:

37 (1) The information is privileged under existing law.

38 (2) The information is not evidence of abuse of an elder or
39 dependent adult as described in Sections 15610.30, 15610.57, and
40 15610.63 of the Welfare and Institutions Code.

(3) The party seeking to uphold the confidentiality of the information has demonstrated that there is a substantial probability that prejudice will result from the disclosure and that the party's interest in the information cannot be adequately protected through redaction.

(g) If the court denies the petition for a court protective order, it shall redact any part of the filed information it finds is not evidence of abuse of an elder or dependent adult, as described in Sections 15610.30, 15610.57, and 15610.63 of the Welfare and Institutions Code. Nothing in this subdivision or in paragraph (1), (2), or (3) of subdivision (f) permits the sealing or redacting of a defendant's name in any information made available to the public.

(h) Nothing in this section applies to or affects an action for professional negligence against a health care provider.

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

2017.710. Subject to the findings required by Section 2017.730 and the purpose of permitting and encouraging cost-effective and efficient discovery, "technology," as used in this chapter, 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.

2017.720. (a) Nothing in this chapter diminishes the rights and duties of the parties regarding discovery, privileges, procedural rights, or substantive law.

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

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

2017.730. (a) Pursuant to a noticed motion, a court may enter an order authorizing the use of technology in conducting discovery in any of the following:

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

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

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

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

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

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

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

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

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

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

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

28 (d) Pursuant to an order authorizing the use of technology in
29 conducting discovery, discovery may be conducted and
30 maintained in electronic media and by electronic communication.
31 The court may enter orders prescribing procedures relating to the
32 use of electronic technology in conducting discovery, including
33 orders for service of discovery requests and responses, service and
34 presentation of motions, conduct of discovery in electronic media,
35 and production, storage, and access to information in electronic
36 form.

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



1 2017.740. (a) If a service provider is to be used and
2 compensated by the parties in discovery under this chapter, the
3 court shall appoint the person or organization agreed on by the
4 parties and approve the contract agreed on by the parties and the
5 service provider. If the parties do not agree on selection of a service
6 provider, each party shall submit to the court up to three nominees
7 for appointment, together with a contract acceptable to the
8 nominee. The court shall appoint a service provider from among
9 the nominees. The court may condition this appointment on the
10 acceptance of modifications in the terms of the contract. If no
11 nominations are received from any of the parties, the court shall
12 appoint one or more service providers.

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

22 CHAPTER 4. ATTORNEY WORK PRODUCT

23
24
25 2018.010. For purposes of this chapter, “client” means a
26 “client” as defined in Section 951 of the Evidence Code.

27 2018.020. It is the policy of the state to do both of the
28 following:

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

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

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

38 (b) The work product of an attorney, other than a writing
39 described in subdivision (a), is not discoverable unless the court
40 determines that denial of discovery will unfairly prejudice the

1 party seeking discovery in preparing that party's claim or defense
2 or will result in an injustice.

3 2018.040. This chapter is intended to be a restatement of
4 existing law relating to protection of work product. It is not
5 intended to expand or reduce the extent to which work product is
6 discoverable under existing law in any action.

7 2018.050. Notwithstanding Section 2018.040, when a lawyer
8 is suspected of knowingly participating in a crime or fraud, there
9 is no protection of work product under this chapter in any official
10 investigation by a law enforcement agency or proceeding or action
11 brought by a public prosecutor in the name of the people of the
12 State of California if the services of the lawyer were sought or
13 obtained to enable or aid anyone to commit or plan to commit a
14 crime or fraud.

15 2018.060. Nothing in this chapter is intended to limit an
16 attorney's ability to request an in camera hearing as provided for
17 in *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703.

18 2018.070. (a) The State Bar may discover the work product
19 of an attorney against whom disciplinary charges are pending
20 when it is relevant to issues of breach of duty by the lawyer and
21 requisite client approval has been granted.

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

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

30 2018.080. In an action between an attorney and a client or a
31 former client of the attorney, no work product privilege under this
32 chapter exists if the work product is relevant to an issue of breach
33 by the attorney of a duty to the client arising out of the
34 attorney-client relationship.

35



CHAPTER 5. METHODS AND SEQUENCE OF DISCOVERY

Article 1. General Provisions

2019.010. Any party may obtain discovery by one or more of the following methods:

- (a) Oral and written depositions.
- (b) Interrogatories to a party.
- (c) Inspections of documents, things, and places.
- (d) Physical and mental examinations.
- (e) Requests for admissions.
- (f) Simultaneous exchanges of expert trial witness information.

2019.020. (a) Except as otherwise provided by a rule of the Judicial Council, a local court rule, or a local uniform written policy, the methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or another method, shall not operate to delay the discovery of any other party.

(b) Notwithstanding subdivision (a), on motion and for good cause shown, the court may establish the sequence and timing of discovery for the convenience of parties and witnesses and in the interests of justice.

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

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

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

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

(c) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion for a

1 protective order, unless it finds that the one subject to the sanction
2 acted with substantial justification or that other circumstances
3 make the imposition of the sanction unjust.

4
5 Article 2. Methods and Sequence of Discovery in Specific
6 Contexts
7

8 2019.210. In any action alleging the misappropriation of a
9 trade secret under the Uniform Trade Secrets Act (Title 5
10 (commencing with Section 3426) of Part 1 of Division 4 of the
11 Civil Code), before commencing discovery relating to the trade
12 secret, the party alleging the misappropriation shall identify the
13 trade secret with reasonable particularity subject to any orders that
14 may be appropriate under Section 3426.5 of the Civil Code.

15
16 CHAPTER 6. NONPARTY DISCOVERY
17

18 Article 1. General Provisions
19

20 2020.010. (a) Any of the following methods may be used to
21 obtain discovery within the state from a person who is not a party
22 to the action in which the discovery is sought:

23 (1) An oral deposition under Chapter 9 (commencing with
24 Section 2025.010).

25 (2) A written deposition under Chapter 11 (commencing with
26 Section 2028.010).

27 (3) A deposition for production of business records and things
28 under Article 4 (commencing with Section 2020.410) or Article 5
29 (commencing with Section 2020.510).

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

33 2020.020. A deposition subpoena may command any of the
34 following:

35 (a) Only the attendance and the testimony of the deponent,
36 under Article 3 (commencing with Section 2020.310).

37 (b) Only the production of business records for copying, under
38 Article 4 (commencing with Section 2020.410).

39 (c) The attendance and the testimony of the deponent, as well
40 as the production of business records, other documents, and

1 tangible things, under Article 5 (commencing with Section
2 2020.510).

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

8
9 Article 2. Procedures Applicable to All Types of Deposition
10 Subpoenas
11

12 2020.210. (a) The clerk of the court in which the action is
13 pending shall issue a deposition subpoena signed and sealed, but
14 otherwise in blank, to a party requesting it, who shall fill it in
15 before service.

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

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

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

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

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

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

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

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

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

8 2020.230. (a) If a deposition subpoena requires the personal
9 attendance of the deponent, under Article 3 (commencing with
10 Section 2020.310) or Article 5 (commencing with Section
11 2020.510), the party noticing the deposition shall pay to the
12 deponent in cash or by check the same witness fee and mileage
13 required by Chapter 1 (commencing with Section 68070) of Title
14 8 of the Government Code for attendance and testimony before the
15 court in which the action is pending. This payment, whether or not
16 demanded by the deponent, shall be made, at the option of the party
17 noticing the deposition, either at the time of service of the
18 deposition subpoena, or at the time the deponent attends for the
19 taking of testimony.

20 (b) Service of a deposition subpoena that does not require the
21 personal attendance of a custodian of records or other qualified
22 person, under Article 4 (commencing with Section 2020.410),
23 shall be accompanied, whether or not demanded by the deponent,
24 by a payment in cash or by check of the witness fee required by
25 paragraph (6) of subdivision (b) of Section 1563 of the Evidence
26 Code.

27 2020.240. A deponent who disobeys a deposition subpoena in
28 any manner described in subdivision (c) of Section 2020.220 may
29 be punished for contempt under Chapter 7 (commencing with
30 Section 2023.010) without the necessity of a prior order of court
31 directing compliance by the witness. The deponent is also subject
32 to the forfeiture and the payment of damages set forth in Section
33 1992.

34
35 Article 3. Subpoena Commanding Only Attendance and
36 Testimony of the Deponent
37

38 2020.310. The following rules apply to a deposition subpoena
39 that commands only the attendance and the testimony of the
40 deponent:

1 (a) The subpoena shall specify the time when and the place
2 where the deponent is commanded to attend the deposition.

3 (b) The subpoena shall set forth a summary of all of the
4 following:

5 (1) The nature of a deposition.

6 (2) The rights and duties of the deponent.

7 (3) The penalties for disobedience of a deposition subpoena, as
8 described in Section 2020.240.

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

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

16 (e) If the deponent is an organization, the subpoena shall
17 describe with reasonable particularity the matters on which
18 examination is requested. The subpoena shall also advise the
19 organization of its duty to make the designation of employees or
20 agents who will attend the deposition, as described in Section
21 2025.230.

22
23 Article 4. Subpoena Commanding Only Production of
24 Business Records for Copying
25

26 2020.410. (a) A deposition subpoena that commands only
27 the production of business records for copying shall designate the
28 business records to be produced either by specifically describing
29 each individual item or by reasonably particularizing each
30 category of item.

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

35 (c) A deposition subpoena that commands only the production
36 of business records for copying need not be accompanied by an
37 affidavit or declaration showing good cause for the production of
38 the business records designated in it. It shall be directed to the
39 custodian of those records or another person qualified to certify the
40 records. It shall command compliance in accordance with Section

2020.430 on a date that is no earlier than 20 days after the issuance, or 15 days after the service, of the deposition subpoena, whichever date is later.

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

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

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

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

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

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

(c) If the delivery required by subdivision (a) is made at the office of the business whose records are the subject of the

1 deposition subpoena, the custodian of those records or other
2 qualified person shall do one of the following:

3 (1) Permit the deposition officer specified in the deposition
4 subpoena to make a copy of the originals of the designated
5 business records during normal business hours, as defined in
6 subdivision (e) of Section 1560 of the Evidence Code.

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

14 (d) Unless the parties, and if the records are those of a consumer
15 as defined in Section 1985.3 or 1985.6, the consumer, stipulate to
16 an earlier date, the custodian of the records shall not deliver to the
17 deposition officer the records that are the subject of the deposition
18 subpoena prior to the date and time specified in the deposition
19 subpoena. The following legend shall appear in boldface type on
20 the deposition subpoena immediately following the date and time
21 specified for production: “Do not release the requested records to
22 the deposition officer prior to the date and time stated above.”

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

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

32 2020.440. Promptly on or after the deposition date and after
33 the receipt or the making of a copy of business records under this
34 article, the deposition officer shall provide that copy to the party
35 at whose instance the deposition subpoena was served, and a copy
36 of those records to any other party to the action who then or
37 subsequently, within a period of six months following the
38 settlement of the case, notifies the deposition officer that the party
39 desires to purchase a copy of those records.

40



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

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

(1) Comply with the requirements of Section 2020.310.

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

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

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

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

CHAPTER 7. SANCTIONS

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

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

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

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

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

3 (e) Making, without substantial justification, an unmeritorious
4 objection to discovery.

5 (f) Making an evasive response to discovery.

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

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

9 (i) Failing to confer in person, by telephone, or by letter with
10 an opposing party or attorney in a reasonable and good faith
11 attempt to resolve informally any dispute concerning discovery, if
12 the section governing a particular discovery motion requires the
13 filing of a declaration stating facts showing that an attempt at
14 informal resolution has been made.

15 2023.020. Notwithstanding the outcome of the particular
16 discovery motion, the court shall impose a monetary sanction
17 ordering that any party or attorney who fails to confer as required
18 pay the reasonable expenses, including attorney's fees, incurred by
19 anyone as a result of that conduct.

20 2023.030. To the extent authorized by the chapter governing
21 any particular discovery method or any other provision of this title,
22 the court, after notice to any affected party, person, or attorney, and
23 after opportunity for hearing, may impose the following sanctions
24 against anyone engaging in conduct that is a misuse of the
25 discovery process:

26 (a) The court may impose a monetary sanction ordering that
27 one engaging in the misuse of the discovery process, or any
28 attorney advising that conduct, or both pay the reasonable
29 expenses, including attorney's fees, incurred by anyone as a result
30 of that conduct. The court may also impose this sanction on one
31 unsuccessfully asserting that another has engaged in the misuse of
32 the discovery process, or on any attorney who advised that
33 assertion, or on both. If a monetary sanction is authorized by any
34 provision of this title, the court shall impose that sanction unless
35 it finds that the one subject to the sanction acted with substantial
36 justification or that other circumstances make the imposition of the
37 sanction unjust.

38 (b) The court may impose an issue sanction ordering that
39 designated facts shall be taken as established in the action in
40 accordance with the claim of the party adversely affected by the

1 misuse of the discovery process. The court may also impose an
2 issue sanction by an order prohibiting any party engaging in the
3 misuse of the discovery process from supporting or opposing
4 designated claims or defenses.

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

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

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

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

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

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

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

19 2023.040. A request for a sanction shall, in the notice of
20 motion, identify every person, party, and attorney against whom
21 the sanction is sought, and specify the type of sanction sought. The
22 notice of motion shall be supported by a memorandum of points
23 and authorities, and accompanied by a declaration setting forth
24 facts supporting the amount of any monetary sanction sought.

25
26 CHAPTER 8. TIME FOR COMPLETION OF DISCOVERY
27

28 2024.010. As used in this chapter, discovery is considered
29 completed on the day a response is due or on the day a deposition
30 begins.

31 2024.020. (a) Except as otherwise provided in this chapter,
32 any party shall be entitled as a matter of right to complete
33 discovery proceedings on or before the 30th day, and to have
34 motions concerning discovery heard on or before the 15th day,
35 before the date initially set for the trial of the action.

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

39 2024.030. Any party shall be entitled as a matter of right to
40 complete discovery proceedings pertaining to a witness identified

1 under Chapter 18 (commencing with Section 2034.010) on or
2 before the 15th day, and to have motions concerning that discovery
3 heard on or before the 10th day, before the date initially set for the
4 trial of the action.

5 2024.040. (a) The time limit on completing discovery in an
6 action to be arbitrated under Chapter 2.5 (commencing with
7 Section 1141.10) of Title 3 of Part 3 is subject to Judicial Council
8 Rule. After an award in a case ordered to judicial arbitration,
9 completion of discovery is limited by Section 1141.24.

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

11 (1) Summary proceedings for obtaining possession of real
12 property governed by Chapter 4 (commencing with Section 1159)
13 of Title 3 of Part 3. Except as provided in Sections 2024.050 and
14 2025.060, discovery in these proceedings shall be completed on or
15 before the fifth day before the date set for trial.

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

18 2024.050. (a) On motion of any party, the court may grant
19 leave to complete discovery proceedings, or to have a motion
20 concerning discovery heard, closer to the initial trial date, or to
21 reopen discovery after a new trial date has been set. This motion
22 shall be accompanied by a meet and confer declaration under
23 Section 2016.040.

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

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

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

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

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

38 (c) The court shall impose a monetary sanction under Chapter
39 7 (commencing with Section 2023.010) against any party, person,
40 or attorney who unsuccessfully makes or opposes a motion to

1 extend or to reopen discovery, unless it finds that the one subject
2 to the sanction acted with substantial justification or that other
3 circumstances make the imposition of the sanction unjust.

4 2024.060. Parties to an action may, with the consent of any
5 party affected by it, enter into an agreement to extend the time for
6 the completion of discovery proceedings or for the hearing of
7 motions concerning discovery, or to reopen discovery after a new
8 date for trial of the action has been set. This agreement may be
9 informal, but it shall be confirmed in a writing that specifies the
10 extended date. In no event shall this agreement require a court to
11 grant a continuance or postponement of the trial of the action.

12 CHAPTER 9. ORAL DEPOSITION INSIDE CALIFORNIA

13 Article 1. General Provisions

14
15
16
17 2025.010. Any party may obtain discovery within the scope
18 delimited by Chapter 2 (commencing with Section 2017.010) and
19 Chapter 3 (commencing with Section 2017.710), and subject to the
20 restrictions set forth in Chapter 5 (commencing with Section
21 2019.010), by taking in California the oral deposition of any
22 person, including any party to the action. The person deposed may
23 be a natural person, an organization such as a public or private
24 corporation, a partnership, an association, or a governmental
25 agency.

26 Article 2. Deposition Notice

27
28
29 2025.210. Subject to Sections 2025.270 and 2025.610, an
30 oral deposition may be taken as follows:

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

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

1 2025.220. (a) A party desiring to take the oral deposition of
2 any person shall give notice in writing. The deposition notice shall
3 state all of the following:

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

5 (2) The date of the deposition, selected under Section
6 2025.270, and the time it will commence.

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

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

14 (5) Any intention by the party noticing the deposition to record
15 the testimony by audio or video technology, in addition to
16 recording the testimony by the stenographic method as required by
17 Section 2025.330 and any intention to record the testimony by
18 stenographic method through the instant visual display of the
19 testimony. If the deposition will be conducted using instant visual
20 display, a copy of the deposition notice shall also be given to the
21 deposition officer. Any offer to provide the instant visual display
22 of the testimony or to provide rough draft transcripts to any party
23 which is accepted prior to, or offered at, the deposition shall also
24 be made by the deposition officer at the deposition to all parties in
25 attendance. Any party or attorney requesting the provision of the
26 instant visual display of the testimony, or rough draft transcripts,
27 shall pay the reasonable cost of those services, which may be no
28 greater than the costs charged to any other party or attorney.

29 (6) Any intention to reserve the right to use at trial a video
30 recording of the deposition testimony of a treating or consulting
31 physician or of any expert witness under subdivision (d) of Section
32 2025.620. In this event, the operator of the video camera shall be
33 a person who is authorized to administer an oath, and shall not be
34 financially interested in the action or be a relative or employee of
35 any attorney of any of the parties.

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

1 2025.230. If the deponent named is not a natural person, the
2 deposition notice shall describe with reasonable particularity the
3 matters on which examination is requested. In that event, the
4 deponent shall designate and produce at the deposition those of its
5 officers, directors, managing agents, employees, or agents who are
6 most qualified to testify on its behalf as to those matters to the
7 extent of any information known or reasonably available to the
8 deponent.

9 2025.240. (a) The party who prepares a notice of deposition
10 shall give the notice to every other party who has appeared in the
11 action. The deposition notice, or the accompanying proof of
12 service, shall list all the parties or attorneys for parties on whom
13 it is served.

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

19 (1) A notice of the deposition.

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

22 (3) A copy of the deposition subpoena.

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

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

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

39 (c) Unless the organization consents to a more distant place, the
40 deposition of any other organization shall be taken within 75 miles

1 of the organization's principal executive or business office in
2 California. If the organization has not designated a principal
3 executive or business office in California, the deposition shall be
4 taken at a place that is, at the option of the party giving notice of
5 the deposition, either within the county where the action is
6 pending, or within 75 miles of any executive or business office in
7 California of the organization.

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

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

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

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

23 (3) The convenience of the deponent.

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

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

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

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

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

36 (d) The court shall impose a monetary sanction under Chapter
37 7 (commencing with Section 2023.010) against any party, person,
38 or attorney who unsuccessfully makes or opposes a motion to
39 increase the travel limits for a party deponent, unless it finds that
40 the one subject to the sanction acted with substantial justification

1 or that other circumstances make the imposition of the sanction
2 unjust.

3 2025.270. (a) An oral deposition shall be scheduled for a date
4 at least 10 days after service of the deposition notice. If, as defined
5 in subdivision (a) of Section 1985.3, the party giving notice of the
6 deposition is a subpoenaing party, and the deponent is a witness
7 commanded by a deposition subpoena to produce personal records
8 of a consumer, the deposition shall be scheduled for a date at least
9 20 days after issuance of that subpoena.

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

14 (c) On motion or ex parte application of any party or deponent,
15 for good cause shown, the court may shorten or extend the time for
16 scheduling a deposition, or may stay its taking until the
17 determination of a motion for a protective order under Section
18 2025.420.

19 2025.280. (a) The service of a deposition notice under
20 Section 2025.240 is effective to require any deponent who is a
21 party to the action or an officer, director, managing agent, or
22 employee of a party to attend and to testify, as well as to produce
23 any document or tangible thing for inspection and copying.

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

30 Article 3. Conduct of Deposition

31
32 2025.310. (a) A person may take, and any person other than
33 the deponent may attend, a deposition by telephone or other
34 remote electronic means.

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

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

4 2025.320. Except as provided in Section 2020.420, the
5 deposition shall be conducted under the supervision of an officer
6 who is authorized to administer an oath and is subject to all of the
7 following requirements:

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

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

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

33 (d) Upon the request of any party or any party's attorney
34 attending a deposition, any party or any party's attorney attending
35 the deposition shall enter in the record of the deposition all services
36 and products made available to that party or party's attorney or
37 third party who is financing all or part of the action by the
38 deposition officer or by the entity providing the services of the
39 deposition officer. A party in the action who is not represented by



1 an attorney shall be informed by the noticing party or the party's
2 attorney that the unrepresented party may request this statement.

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

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

10 2025.330. (a) The deposition officer shall put the deponent
11 under oath.

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

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

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

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

1 2025.340. If a deposition is being recorded by means of audio
2 or video technology by, or at the direction of, any party, the
3 following procedure shall be observed:

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

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

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

18 (d) Services and products offered or provided by the deposition
19 officer or the entity providing the services of the deposition officer
20 to any party or to any party's attorney or third party who is
21 financing all or part of the action shall be offered or provided to
22 all parties or their attorneys attending the deposition. No service
23 or product may be offered or provided by the deposition officer or
24 by the entity providing the services of the deposition officer to any
25 party or any party's attorney or third party who is financing all or
26 part of the action unless the service or product is offered or
27 provided to all parties or their attorneys attending the deposition.
28 All services and products offered or provided shall be made
29 available at the same time to all parties or their attorneys.

30 (e) The deposition officer or the entity providing the services
31 of the deposition officer shall not provide to any party or any other
32 person or entity any service or product consisting of the deposition
33 officer's notations or comments regarding the demeanor of any
34 witness, attorney, or party present at the deposition. The deposition
35 officer or the entity providing the services of the deposition officer
36 shall not collect any personal identifying information about the
37 witness as a service or product to be provided to any party or third
38 party who is financing all or part of the action.

39 (f) Upon the request of any party or any party's attorney
40 attending a deposition, any party or any party's attorney attending

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

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

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

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

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

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

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

31 (m) A party intending to offer an audio or video recording of
32 a deposition in evidence under Section 2025.620 shall notify the
33 court and all parties in writing of that intent and of the parts of the
34 deposition to be offered. That notice shall be given within
35 sufficient time for objections to be made and ruled on by the judge
36 to whom the case is assigned for trial or hearing, and for any
37 editing of the recording. Objections to all or part of the deposition
38 shall be made in writing. The court may permit further
39 designations of testimony and objections as justice may require.
40 With respect to those portions of an audio or video record of

deposition testimony 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 recording be prepared for use at the trial or hearing. The original audio or video record of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering an audio or video recording of that testimony under Section 2025.620 shall accompany that offer with a stenographic transcript prepared from that recording.

Article 4. Objections, Sanctions, Protective Orders, Motions to Compel, and Suspension of Depositions

2025.410. (a) Any party served with a deposition notice that does not comply with Article 2 (commencing with Section 2025.210) 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.

(b) 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 Section 2025.620 if the party did not attend the deposition and if the court determines that the objection was a valid one.

(c) 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 meet and confer declaration under Section 2016.040. The taking of the deposition is stayed pending the determination of this motion.

(d) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) 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

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

3 2025.420. (a) Before, during, or after a deposition, any party,
4 any deponent, or any other affected natural person or organization
5 may promptly move for a protective order. The motion shall be
6 accompanied by a meet and confer declaration under Section
7 2016.040.

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

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

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

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

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

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

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

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

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

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

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

36 (11) That all or certain of the writings or tangible things
37 designated in the deposition notice not be produced, inspected, or
38 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.

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

(c) 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.

(d) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) 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.

2025.430. If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) 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.

2025.440. (a) 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 Chapter 7 (commencing with Section 2023.010) 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

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

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

7 2025.450. (a) If, after service of a deposition notice, a party
8 to the action or an officer, director, managing agent, or employee
9 of a party, or a person designated by an organization that is a party
10 under Section 2025.230, without having served a valid objection
11 under Section 2025.410, fails to appear for examination, or to
12 proceed with it, or to produce for inspection any document or
13 tangible thing described in the deposition notice, the party giving
14 the notice may move for an order compelling the deponent's
15 attendance and testimony, and the production for inspection of any
16 document or tangible thing described in the deposition notice.

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

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

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

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

35 (2) On motion of any other party who, in person or by attorney,
36 attended at the time and place specified in the deposition notice in
37 the expectation that the deponent's testimony would be taken, the
38 court shall impose a monetary sanction under Chapter 7
39 (commencing with Section 2023.010) in favor of that party and
40 against the deponent or the party with whom the deponent is



1 affiliated, unless the court finds that the one subject to the sanction
2 acted with substantial justification or that other circumstances
3 make the imposition of the sanction unjust.

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

17 2025.460. (a) The protection of information from discovery
18 on the ground that it is privileged or that it is a protected work
19 product under Chapter 4 (commencing with Section 2018.010) is
20 waived unless a specific objection to its disclosure is timely made
21 during the deposition.

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

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

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

1 deposition or complete the examination on other matters without
2 waiving the right at a later time to move for an order compelling
3 that answer or production under Section 2025.480.

4 2025.470. The deposition officer may not suspend the taking
5 of testimony without the stipulation of all parties present unless
6 any party attending the deposition, including the deponent,
7 demands that the deposition officer suspend taking the testimony
8 to enable that party or deponent to move for a protective order
9 under Section 2025.420 on the ground that the examination is
10 being conducted in bad faith or in a manner that unreasonably
11 annoys, embarrasses, or oppresses that deponent or party.

12 2025.480. (a) If a deponent fails to answer any question or to
13 produce any document or tangible thing under the deponent's
14 control that is specified in the deposition notice or a deposition
15 subpoena, the party seeking discovery may move the court for an
16 order compelling that answer or production.

17 (b) This motion shall be made no later than 60 days after the
18 completion of the record of the deposition, and shall be
19 accompanied by a meet and confer declaration under Section
20 2016.040.

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

26 (d) Not less than five days prior to the hearing on this motion,
27 the moving party shall lodge with the court a certified copy of any
28 parts of the stenographic transcript of the deposition that are
29 relevant to the motion. If a deposition is recorded by audio or video
30 technology, the moving party is required to lodge a certified copy
31 of a transcript of any parts of the deposition that are relevant to the
32 motion.

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

36 (f) The court shall impose a monetary sanction under Chapter
37 7 (commencing with Section 2023.010) against any party, person,
38 or attorney who unsuccessfully makes or opposes a motion to
39 compel answer or production, unless it finds that the one subject

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

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

16
17 Article 5. Transcript or Recording
18

19 2025.510. (a) Unless the parties agree otherwise, the
20 testimony at any deposition recorded by stenographic means shall
21 be transcribed.

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

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

28 (d) If the deposition officer receives a request from a party for
29 an original or a copy of the deposition transcript, or any portion
30 thereof, and the full or partial transcript will be available to that
31 party prior to the time the original or copy would be available to
32 any other party, the deposition officer shall immediately notify all
33 other parties attending the deposition of the request, and shall,
34 upon request by any party other than the party making the original
35 request, make that copy of the full or partial deposition transcript
36 available to all parties at the same time.

37 (e) Stenographic notes of depositions shall be retained by the
38 reporter for a period of not less than eight years from the date of
39 the deposition, where no transcript is produced, and not less than
40 one year from the date on which the transcript is produced. Those

1 notes may be either on paper or electronic media, as long as it
2 allows for satisfactory production of a transcript at any time during
3 the periods specified.

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

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

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

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

18 2025.520. (a) If the deposition testimony is stenographically
19 recorded, the deposition officer shall send written notice to the
20 deponent and to all parties attending the deposition when the
21 original transcript of the testimony for each session of the
22 deposition is available for reading, correcting, and signing, unless
23 the deponent and the attending parties agree on the record that the
24 reading, correcting, and signing of the transcript of the testimony
25 will be waived or that the reading, correcting, and signing of a
26 transcript of the testimony will take place after the entire
27 deposition has been concluded or at some other specific time.

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

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



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

4 (e) The deposition officer shall indicate on the original of the
5 transcript, if the deponent has not already done so at the office of
6 the deposition officer, any action taken by the deponent and
7 indicate on the original of the transcript, the deponent's approval
8 of, or failure or refusal to approve, the transcript. The deposition
9 officer shall also notify in writing the parties attending the
10 deposition of any changes which the deponent timely made in
11 person.

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

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

21 (h) The court shall impose a monetary sanction under Chapter
22 7 (commencing with Section 2023.010) against any party, person,
23 or attorney who unsuccessfully makes or opposes a motion to
24 suppress a deposition under this section, unless the court finds that
25 the one subject to the sanction acted with substantial justification
26 or that other circumstances make the imposition of the sanction
27 unjust.

28 2025.530. (a) If there is no stenographic transcription of the
29 deposition, the deposition officer shall send written notice to the
30 deponent and to all parties attending the deposition that the audio
31 or video recording made by, or at the direction of, any party, is
32 available for review, unless the deponent and all these parties agree
33 on the record to waive the hearing or viewing of the audio or video
34 recording of the testimony.

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

38 (c) The deposition officer shall set forth in a writing to
39 accompany the recording any changes made by the deponent, as
40 well as either the deponent's signature identifying the deposition

1 as the deponent's own, or a statement of the deponent's failure to
2 supply the signature, or to contact the officer within the period
3 prescribed by subdivision (b).

4 (d) When a deponent fails to contact the officer within the
5 period prescribed by subdivision (b), or expressly refuses by a
6 signature to identify the deposition as the deponent's own, the
7 deposition shall be given the same effect as though signed.

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

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

19 2025.540. (a) The deposition officer shall certify on the
20 transcript of the deposition, or in a writing accompanying an audio
21 or video record of deposition testimony, as described in Section
22 2025.530, that the deponent was duly sworn and that the transcript
23 or recording is a true record of the testimony given.

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

31 2025.550. (a) The certified transcript of a deposition shall
32 not be filed with the court. Instead, the deposition officer shall
33 securely seal that transcript in an envelope or package endorsed
34 with the title of the action and marked: "Deposition of (here insert
35 name of deponent)," and shall promptly transmit it to the attorney
36 for the party who noticed the deposition. This attorney shall store
37 it under conditions that will protect it against loss, destruction, or
38 tampering.

39 (b) The attorney to whom the transcript of a deposition is
40 transmitted shall retain custody of it until six months after final

1 disposition of the action. At that time, the transcript may be
2 destroyed, unless the court, on motion of any party and for good
3 cause shown, orders that the transcript be preserved for a longer
4 period.

5 2025.560. (a) An audio or video record of deposition
6 testimony made by, or at the direction of, any party, including a
7 certified tape made by an operator qualified under subdivisions (b)
8 to (f), inclusive, of Section 2025.340, shall not be filed with the
9 court. Instead, the operator shall retain custody of that record and
10 shall store it under conditions that will protect it against loss,
11 destruction, or tampering, and preserve as far as practicable the
12 quality of the recording and the integrity of the testimony and
13 images it contains.

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

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

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

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

31 2025.570. (a) Notwithstanding subdivision (b) of Section
32 2025.320, unless the court issues an order to the contrary, a copy
33 of the transcript of the deposition testimony made by, or at the
34 direction of, any party, or an audio or video recording of the
35 deposition testimony, if still in the possession of the deposition
36 officer, shall be made available by the deposition officer to any
37 person requesting a copy, on payment of a reasonable charge set
38 by the deposition officer.

39 (b) If a copy is requested from the deposition officer, the
40 deposition officer shall mail a notice to all parties attending the

1 deposition and to the deponent at the deponent's last known
2 address advising them of all of the following:

3 (1) The copy is being sought.

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

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

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

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

11
12 Article 6. Post-Deposition Procedures

13
14 2025.610. (a) Once any party has taken the deposition of any
15 natural person, including that of a party to the action, neither the
16 party who gave, nor any other party who has been served with a
17 deposition notice pursuant to Section 2025.240 may take a
18 subsequent deposition of that deponent.

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

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

26 (1) The person was examined as a result of that person's
27 designation to testify on behalf of an organization under Section
28 2025.230.

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

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

35 2025.620. At the trial or any other hearing in the action, any
36 part or all of a deposition may be used against any party who was
37 present or represented at the taking of the deposition, or who had
38 due notice of the deposition and did not serve a valid objection
39 under Section 2025.410, so far as admissible under the rules of
40 evidence applied as though the deponent were then present and

1 testifying as a witness, in accordance with the following
2 provisions:

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

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

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

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

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

21 (A) Exempted or precluded on the ground of privilege from
22 testifying concerning the matter to which the deponent's testimony
23 is relevant.

24 (B) Disqualified from testifying.

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

27 (D) Absent from the trial or other hearing and the court is
28 unable to compel the deponent's attendance by its process.

29 (E) Absent from the trial or other hearing and the proponent of
30 the deposition has exercised reasonable diligence but has been
31 unable to procure the deponent's attendance by the court's process.

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

36 (d) Any party may use a video recording of the deposition
37 testimony of a treating or consulting physician or of any expert
38 witness even though the deponent is available to testify if the
39 deposition notice under Section 2025.220 reserved the right to use

1 the deposition at trial, and if that party has complied with
2 subdivision (m) of Section 2025.340.

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

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

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

17
18 CHAPTER 10. ORAL DEPOSITION OUTSIDE CALIFORNIA
19

20 2026.010. (a) Any party may obtain discovery by taking an
21 oral deposition, as described in Section 2025.010, in another state
22 of the United States, or in a territory or an insular possession
23 subject to its jurisdiction. Except as modified in this section, the
24 procedures for taking oral depositions in California set forth in
25 Chapter 9 (commencing with Section 2025.010) apply to an oral
26 deposition taken in another state of the United States, or in a
27 territory or an insular possession subject to its jurisdiction.

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

36 (c) If the deponent is not a party to the action or an officer,
37 director, managing agent, or employee of a party, a party serving
38 a deposition notice under this section shall use any process and
39 procedures required and available under the laws of the state,
40 territory, or insular possession where the deposition is to be taken

1 to compel the deponent to attend and to testify, as well as to
2 produce any document or tangible thing for inspection, copying,
3 and any related activity.

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

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

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

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

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

25 2027.010. (a) Any party may obtain discovery by taking an
26 oral deposition, as described in Section 2025.010, in a foreign
27 nation. Except as modified in this section, the procedures for
28 taking oral depositions in California set forth in Chapter 9
29 (commencing with Section 2025.010) apply to an oral deposition
30 taken in a foreign nation.

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

36 (c) If a deponent is not a party to the action or an officer,
37 director, managing agent or employee of a party, a party serving
38 a deposition notice under this section shall use any process and
39 procedures required and available under the laws of the foreign
40 nation where the deposition is to be taken to compel the deponent

1 to attend and to testify, as well as to produce any document or
2 tangible thing for inspection, copying, and any related activity.

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

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

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

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

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

22 CHAPTER 11. DEPOSITION BY WRITTEN QUESTIONS

23
24
25 2028.010. Any party may obtain discovery by taking a
26 deposition by written questions instead of by oral examination.
27 Except as modified in this chapter, the procedures for taking oral
28 depositions set forth in Chapters 9 (commencing with Section
29 2025.010) and 10 (commencing with Section 2026.010) apply to
30 written depositions.

31 2028.020. The notice of a written deposition shall comply
32 with Sections 2025.220 and 2025.230, and with subdivision (c) of
33 Section 2020.240, except as follows:

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

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

1 2028.030. (a) The questions to be propounded to the
2 deponent by direct examination shall accompany the notice of a
3 written deposition.

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

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

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

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

16 2028.040. (a) A party who objects to the form of any question
17 shall serve a specific objection to that question on all parties
18 entitled to notice of the deposition within 15 days after service of
19 the question. A party who fails to timely serve an objection to the
20 form of a question waives it.

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

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

32 2028.050. (a) A party who objects to any question on the
33 ground that it calls for information that is privileged or is protected
34 work product under Chapter 4 (commencing with Section
35 2018.010) shall serve a specific objection to that question on all
36 parties entitled to notice of the deposition within 15 days after
37 service of the question. A party who fails to timely serve that
38 objection waives it.

39 (b) The party propounding any question to which an objection
40 is made on those grounds may then move the court for an order

1 overruling that objection. This motion shall be accompanied by a
2 meet and confer declaration under Section 2016.040. The
3 deposition officer shall not propound to the deponent any question
4 to which a written objection on those grounds has been served
5 unless the court has overruled that objection.

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

12 2028.060. (a) The party taking a written deposition may
13 forward to the deponent a copy of the questions on direct
14 examination for study prior to the deposition.

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

18 2028.070. In addition to any appropriate order listed in
19 Section 2025.420, the court may order any of the following:

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

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

25 (c) That objections under Sections 2028.040 and 2028.050 be
26 sustained or overruled.

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

29 2028.080. The party taking a written deposition shall deliver
30 to the officer designated in the deposition notice a copy of that
31 notice and of all questions served under Section 2028.030. The
32 deposition officer shall proceed promptly to propound the
33 questions and to take and record the testimony of the deponent in
34 response to the questions.

35
36 CHAPTER 12. DEPOSITION IN DEPOSITION IN ACTION PENDING
37 OUTSIDE CALIFORNIA
38

39 2029.010. Whenever any mandate, writ, letters rogatory,
40 letter of request, or commission is issued out of any court of record

1 in any other state, territory, or district of the United States, or in a
2 foreign nation, or whenever, on notice or agreement, it is required
3 to take the oral or written deposition of a natural person in
4 California, the deponent may be compelled to appear and testify,
5 and to produce documents and things, in the same manner, and by
6 the same process as may be employed for the purpose of taking
7 testimony in actions pending in California.

8
9 CHAPTER 13. WRITTEN INTERROGATORIES

10
11
12 Article 1. Propounding Interrogatories

13
14 2030.010. (a) Any party may obtain discovery within the
15 scope delimited by Chapters 2 (commencing with Section
16 2017.010) and 3 (commencing with Section 2017.710), and
17 subject to the restrictions set forth in Chapter 5 (commencing with
18 Section 2019.010), by propounding to any other party to the action
19 written interrogatories to be answered under oath.

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

27 2030.020. (a) A defendant may propound interrogatories to
28 a party to the action without leave of court at any time.

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

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

37 2030.030. (a) A party may propound to another party either
38 or both of the following:

39 (1) 35 specially prepared interrogatories that are relevant to the
40 subject matter of the pending action.

(2) Any additional number of official form interrogatories, as described in Chapter 17 (commencing with Section 2033.710), that are relevant to the subject matter of the pending action.

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

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

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

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

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

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

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

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

DECLARATION FOR ADDITIONAL DISCOVERY

I, _____, declare:

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

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

6 3. This set of interrogatories will cause the total number of
7 specially prepared interrogatories propounded to the party to
8 whom they are directed to exceed the number of specially prepared
9 interrogatories permitted by Section 2030.30 of the Code of Civil
10 Procedure.

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

14 5. This set of interrogatories contains a total of _____
15 specially prepared interrogatories.

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

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

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

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

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

32
33 _____
34 (Signature)

35
36 Attorney for _____
37

38 2030.060. (a) A party propounding interrogatories shall
39 number each set of interrogatories consecutively.

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

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

(d) Each interrogatory shall be full and complete in and of itself. No preface or instruction shall be included with a set of interrogatories unless it has been approved under Chapter 17 (commencing with Section 2033.710).

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

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

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

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

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

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

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

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

2030.090. (a) When interrogatories have been propounded, the responding party, and any other party or affected natural person

1 or organization may promptly move for a protective order. This
2 motion shall be accompanied by a meet and confer declaration
3 under Section 2016.040.

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

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

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

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

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

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

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

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

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

31 (d) The court shall impose a monetary sanction under Chapter
32 7 (commencing with Section 2023.010) against any party, person,
33 or attorney who unsuccessfully makes or opposes a motion for a
34 protective order under this section, unless it finds that the one
35 subject to the sanction acted with substantial justification or that
36 other circumstances make the imposition of the sanction unjust.
37

Article 2. Response to Interrogatories

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

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

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

(3) An objection to the particular interrogatory.

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

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

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

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

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

2030.230. If the answer to an interrogatory would necessitate the preparation or the making of a compilation, abstract, audit, or summary of or from the documents of the party to whom the interrogatory is directed, and if the burden or expense of preparing or making it would be substantially the same for the party propounding the interrogatory as for the responding party, it is a sufficient answer to that interrogatory to refer to this section and to specify the writings from which the answer may be derived or ascertained. This specification shall be in sufficient detail to permit the propounding party to locate and to identify, as readily as the responding party can, the documents from which the answer may be ascertained. The responding party shall then afford to the propounding party a reasonable opportunity to examine, audit, or

inspect these documents and to make copies, compilations, abstracts, or summaries of them.

2030.240. (a) If only a part of an interrogatory is objectionable, the remainder of the interrogatory shall be answered.

(b) If an objection is made to an interrogatory or to a part of an interrogatory, the specific ground for the objection shall be set forth clearly in the response. If an objection is based on a claim of privilege, the particular privilege invoked shall be clearly stated. If an objection is based on a claim that the information sought is protected work product under Chapter 4 (commencing with Section 2018.010), that claim shall be expressly asserted.

2030.250. (a) The party to whom the interrogatories are directed shall sign the response under oath unless the response contains only objections.

(b) If that party is a public or private corporation, or a partnership, association, or governmental agency, one of its officers or agents shall sign the response under oath on behalf of that party. If the officer or agent signing the response on behalf of that party is an attorney acting in that capacity for the party, that party waives any lawyer-client privilege and any protection for work product under Chapter 4 (commencing with Section 2018.010) during any subsequent discovery from that attorney concerning the identity of the sources of the information contained in the response.

(c) The attorney for the responding party shall sign any responses that contain an objection.

2030.260. (a) Within 30 days after service of interrogatories, or in unlawful detainer actions within five days after service of interrogatories the party to whom the interrogatories are propounded shall serve the original of the response to them on the propounding party, unless on motion of the propounding party the court has shortened the time for response, or unless on motion of the responding party the court has extended the time for response. In unlawful detainer actions, the party to whom the interrogatories are propounded shall have five days from the date of service to respond unless on motion of the propounding party the court has shortened the time for response.

(b) The party to whom the interrogatories are propounded shall also serve a copy of the response on all other parties who have

1 appeared in the action. On motion, with or without notice, the court
2 may relieve the party from this requirement on its determination
3 that service on all other parties would be unduly expensive or
4 burdensome.

5 2030.270. (a) The party propounding interrogatories and the
6 responding party may agree to extend the time for service of a
7 response to a set of interrogatories, or to particular interrogatories
8 in a set, to a date beyond that provided in Section 2030.260.

9 (b) This agreement may be informal, but it shall be confirmed
10 in a writing that specifies the extended date for service of a
11 response.

12 (c) Unless this agreement expressly states otherwise, it is
13 effective to preserve to the responding party the right to respond
14 to any interrogatory to which the agreement applies in any manner
15 specified in Sections 2030.210, 2030.220, 2030.230, and
16 2030.240.

17 2030.280. (a) The interrogatories and the response thereto
18 shall not be filed with the court.

19 (b) The propounding party shall retain both the original of the
20 interrogatories, with the original proof of service affixed to them,
21 and the original of the sworn response until six months after final
22 disposition of the action. At that time, both originals may be
23 destroyed, unless the court on motion of any party and for good
24 cause shown orders that the originals be preserved for a longer
25 period.

26 2030.290. If a party to whom interrogatories are directed fails
27 to serve a timely response, the following rules apply:

28 (a) The party to whom the interrogatories are directed waives
29 any right to exercise the option to produce writings under Section
30 2030.230, as well as any objection to the interrogatories, including
31 one based on privilege or on the protection for work product under
32 Chapter 4 (commencing with Section 2018.010). The court, on
33 motion, may relieve that party from this waiver on its
34 determination that both of the following conditions are satisfied:

35 (1) The party has subsequently served a response that is in
36 substantial compliance with Sections 2030.210, 2030.220,
37 2030.230, and 2030.240.

38 (2) The party's failure to serve a timely response was the result
39 of mistake, inadvertence, or excusable neglect.

1 (b) The party propounding the interrogatories may move for an
2 order compelling response to the interrogatories.

3 (c) The court shall impose a monetary sanction under Chapter
4 7 (commencing with Section 2023.010) against any party, person,
5 or attorney who unsuccessfully makes or opposes a motion to
6 compel a response to interrogatories, unless it finds that the one
7 subject to the sanction acted with substantial justification or that
8 other circumstances make the imposition of the sanction unjust. If
9 a party then fails to obey an order compelling answers, the court
10 may make those orders that are just, including the imposition of an
11 issue sanction, an evidence sanction, or a terminating sanction
12 under Chapter 7 (commencing with Section 2023.010). In lieu of
13 or in addition to that sanction, the court may impose a monetary
14 sanction under Chapter 7 (commencing with Section 2023.010).

15 2030.300. (a) On receipt of a response to interrogatories, the
16 propounding party may move for an order compelling a further
17 response if the propounding party deems that any of the following
18 apply:

19 (1) An answer to a particular interrogatory is evasive or
20 incomplete.

21 (2) An exercise of the option to produce documents under
22 Section 2030.230 is unwarranted or the required specification of
23 those documents is inadequate.

24 (3) An objection to an interrogatory is without merit or too
25 general.

26 (b) A motion under subdivision (a) shall be accompanied by a
27 meet and confer declaration under Section 2016.040.

28 (c) Unless notice of this motion is given within 45 days of the
29 service of the response, or any supplemental response, or on or
30 before any specific later date to which the propounding party and
31 the responding party have agreed in writing, the propounding
32 party waives any right to compel a further response to the
33 interrogatories.

34 (d) The court shall impose a monetary sanction under Chapter
35 7 (commencing with Section 2023.010) against any party, person,
36 or attorney who unsuccessfully makes or opposes a motion to
37 compel a further response to interrogatories, unless it finds that the
38 one subject to the sanction acted with substantial justification or
39 that other circumstances make the imposition of the sanction
40 unjust.

(e) If a party then fails to obey an order compelling further response to interrogatories, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

2030.310. (a) Without leave of court, a party may serve an amended answer to any interrogatory that contains information subsequently discovered, inadvertently omitted, or mistakenly stated in the initial interrogatory. At the trial of the action, the propounding party or any other party may use the initial answer under Section 2030.410, and the responding party may then use the amended answer.

(b) The party who propounded an interrogatory to which an amended answer has been served may move for an order that the initial answer to that interrogatory be deemed binding on the responding party for the purpose of the pending action. This motion shall be accompanied by a meet and confer declaration under Section 2016.040.

(c) The court shall grant a motion under subdivision (b) if it determines that all of the following conditions are satisfied:

(1) The initial failure of the responding party to answer the interrogatory correctly has substantially prejudiced the party who propounded the interrogatory.

(2) The responding party has failed to show substantial justification for the initial answer to that interrogatory.

(3) The prejudice to the propounding party cannot be cured either by a continuance to permit further discovery or by the use of the initial answer under Section 2030.410.

(d) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to deem binding an initial answer to an interrogatory, 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.

Article 3. Use of Interrogatory Answer

2030.410. At the trial or any other hearing in the action, so far as admissible under the rules of evidence, the propounding party or any party other than the responding party may use any answer or part of an answer to an interrogatory only against the responding party. It is not ground for objection to the use of an answer to an interrogatory that the responding party is available to testify, has testified, or will testify at the trial or other hearing.

CHAPTER 14. INSPECTION AND PRODUCTION OF DOCUMENTS, TANGIBLE THINGS, LAND, AND OTHER PROPERTY

Article 1. Inspection Demand

2031.010. (a) Any party may obtain discovery within the scope delimited by Chapters 2 (commencing with Section 2017.010) and 3 (commencing with Section 2017.710), and subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), by inspecting documents, tangible things, and land or other property that are in the possession, custody, or control of any other party to the action.

(b) A party may demand that any other party produce and permit the party making the demand, or someone acting on that party's behalf, to inspect and to copy a document that is in the possession, custody, or control of the party on whom the demand is made.

(c) A party may demand that any other party produce and permit the party making the demand, or someone acting on that party's behalf, to inspect and to photograph, test, or sample any tangible things that are in the possession, custody, or control of the party on whom the demand is made.

(d) A party may demand that any other party allow the party making the demand, or someone acting on that party's behalf, to enter on any land or other property that is in the possession, custody, or control of the party on whom the demand is made, and to inspect and to measure, survey, photograph, test, or sample the land or other property, or any designated object or operation on it.

1 2031.020. (a) A defendant may make a demand for
2 inspection without leave of court at any time.

3 (b) A plaintiff may make a demand for inspection without leave
4 of court at any time that is 10 days after the service of the summons
5 on, or in unlawful detainer actions within five days after service
6 of the summons on or appearance by, the party to whom the
7 demand is directed, whichever occurs first.

8 (c) Notwithstanding subdivision (b), on motion with or without
9 notice, the court, for good cause shown, may grant leave to a
10 plaintiff to make an inspection demand at an earlier time.

11 2031.030. (a) A party demanding an inspection shall number
12 each set of demands consecutively.

13 (b) In the first paragraph immediately below the title of the
14 case, there shall appear the identity of the demanding party, the set
15 number, and the identity of the responding party.

16 (c) Each demand in a set shall be separately set forth, identified
17 by number or letter, and shall do all of the following:

18 (1) Designate the documents, tangible things, or land or other
19 property to be inspected either by specifically describing each
20 individual item or by reasonably particularizing each category of
21 item.

22 (2) Specify a reasonable time for the inspection that is at least
23 30 days after service of the demand, or in unlawful detainer actions
24 at least five days after service of the demand, unless the court for
25 good cause shown has granted leave to specify an earlier date.

26 (3) Specify a reasonable place for making the inspection,
27 copying, and performing any related activity.

28 (4) Specify any related activity that is being demanded in
29 addition to an inspection and copying, as well as the manner in
30 which that related activity will be performed, and whether that
31 activity will permanently alter or destroy the item involved.

32 2031.040. The party demanding an inspection shall serve a
33 copy of the inspection demand on the party to whom it is directed
34 and on all other parties who have appeared in the action.

35 2031.050. (a) In addition to the inspection demands
36 permitted by this chapter, a party may propound a supplemental
37 demand to inspect any later acquired or discovered documents,
38 tangible things, or land or other property that are in the possession,
39 custody, or control of the party on whom the demand is made.

1 (b) A party may propound a supplemental inspection demand
2 twice before the initial setting of a trial date, and, subject to the
3 time limits on discovery proceedings and motions provided in
4 Chapter 8 (commencing with Section 2024.010), once after the
5 initial setting of a trial date.

6 (c) Notwithstanding subdivisions (a) and (b), on motion, for
7 good cause shown, the court may grant leave to a party to propound
8 an additional number of supplemental demands for inspection.

9 2031.060. (a) When an inspection of documents, tangible
10 things or places has been demanded, the party to whom the demand
11 has been directed, and any other party or affected person or
12 organization, may promptly move for a protective order. This
13 motion shall be accompanied by a meet and confer declaration
14 under Section 2016.040.

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

21 (1) That all or some of the items or categories of items in the
22 inspection demand need not be produced or made available at all.

23 (2) That the time specified in Section 2030.260 to respond to
24 the set of inspection demands, or to a particular item or category
25 in the set, be extended.

26 (3) That the place of production be other than that specified in
27 the inspection demand.

28 (4) That the inspection be made only on specified terms and
29 conditions.

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

33 (6) That the items produced be sealed and thereafter opened
34 only on order of the court.

35 (c) If the motion for a protective order is denied in whole or in
36 part, the court may order that the party to whom the demand was
37 directed provide or permit the discovery against which protection
38 was sought on terms and conditions that are just.

39 (d) The court shall impose a monetary sanction under Chapter
40 7 (commencing with Section 2023.010) against any party, person,

1 or attorney who unsuccessfully makes or opposes a motion for a
2 protective order, unless it finds that the one subject to the sanction
3 acted with substantial justification or that other circumstances
4 make the imposition of the sanction unjust.

5
6 Article 2. Response to Inspection Demand
7

8 2031.210. (a) The party to whom an inspection demand has
9 been directed shall respond separately to each item or category of
10 item by any of the following:

11 (1) A statement that the party will comply with the particular
12 demand for inspection and any related activities.

13 (2) A representation that the party lacks the ability to comply
14 with the demand for inspection of a particular item or category of
15 item.

16 (3) An objection to the particular demand.

17 (b) In the first paragraph of the response immediately below the
18 title of the case, there shall appear the identity of the responding
19 party, the set number, and the identity of the demanding party.

20 (c) Each statement of compliance, each representation, and
21 each objection in the response shall bear the same number and be
22 in the same sequence as the corresponding item or category in the
23 demand, but the text of that item or category need not be repeated.

24 2031.220. A statement that the party to whom an inspection
25 demand has been directed will comply with the particular demand
26 shall state that the production, inspection, and related activity
27 demanded will be allowed either in whole or in part, and that all
28 documents or things in the demanded category that are in the
29 possession, custody, or control of that party and to which no
30 objection is being made will be included in the production.

31 2031.230. A representation of inability to comply with the
32 particular demand for inspection shall affirm that a diligent search
33 and a reasonable inquiry has been made in an effort to comply with
34 that demand. This statement shall also specify whether the
35 inability to comply is because the particular item or category has
36 never existed, has been destroyed, has been lost, misplaced, or
37 stolen, or has never been, or is no longer, in the possession,
38 custody, or control of the responding party. The statement shall set
39 forth the name and address of any natural person or organization

1 known or believed by that party to have possession, custody, or
2 control of that item or category of item.

3 2031.240. (a) If only part of an item or category of item in an
4 inspection demand is objectionable, the response shall contain a
5 statement of compliance, or a representation of inability to comply
6 with respect to the remainder of that item or category.

7 (b) If the responding party objects to the demand for inspection
8 of an item or category of item, the response shall do both of the
9 following:

10 (1) Identify with particularity any document, tangible thing, or
11 land falling within any category of item in the demand to which an
12 objection is being made.

13 (2) Set forth clearly the extent of, and the specific ground for,
14 the objection. If an objection is based on a claim of privilege, the
15 particular privilege invoked shall be stated. If an objection is based
16 on a claim that the information sought is protected work product
17 under Chapter 4 (commencing with Section 2018.010), that claim
18 shall be expressly asserted.

19 2031.250. (a) The party to whom the demand for inspection
20 is directed shall sign the response under oath unless the response
21 contains only objections.

22 (b) If that party is a public or private corporation or a
23 partnership or association or governmental agency, one of its
24 officers or agents shall sign the response under oath on behalf of
25 that party. If the officer or agent signing the response on behalf of
26 that party is an attorney acting in that capacity for a party, that party
27 waives any lawyer-client privilege and any protection for work
28 product under Chapter 4 (commencing with Section 2018.010)
29 during any subsequent discovery from that attorney concerning
30 the identity of the sources of the information contained in the
31 response.

32 (c) The attorney for the responding party shall sign any
33 responses that contain an objection.

34 2031.260. Within 30 days after service of an inspection
35 demand, or in unlawful detainer actions within five days of an
36 inspection demand, the party to whom the demand is directed shall
37 serve the original of the response to it on the party making the
38 demand, and a copy of the response on all other parties who have
39 appeared in the action, unless on motion of the party making the
40 demand, the court has shortened the time for response, or unless

1 on motion of the party to whom the demand has been directed, the
2 court has extended the time for response. In unlawful detainer
3 actions, the party to whom an inspection demand is directed shall
4 have at least five days from the dates of service of the demand to
5 respond unless on motion of the party making the demand, the
6 court has shortened the time for the response.

7 2031.270. (a) The party demanding an inspection and the
8 responding party may agree to extend the time for service of a
9 response to a set of inspection demands, or to particular items or
10 categories of items in a set, to a date beyond that provided in
11 Section 2031.260.

12 (b) This agreement may be informal, but it shall be confirmed
13 in a writing that specifies the extended date for service of a
14 response.

15 (c) Unless this agreement expressly states otherwise, it is
16 effective to preserve to the responding party the right to respond
17 to any item or category of item in the demand to which the
18 agreement applies in any manner specified in Sections 2031.210,
19 2031.220, 2031.230, 2031.240, and 2031.280.

20 2031.280. (a) Any documents produced in response to an
21 inspection demand shall either be produced as they are kept in the
22 usual course of business, or be organized and labeled to correspond
23 with the categories in the demand.

24 (b) If necessary, the responding party at the reasonable expense
25 of the demanding party shall, through detection devices, translate
26 any data compilations included in the demand into reasonably
27 usable form.

28 2031.290. (a) The inspection demand and the response to it
29 shall not be filed with the court.

30 (b) The party demanding an inspection shall retain both the
31 original of the inspection demand, with the original proof of
32 service affixed to it, and the original of the sworn response until
33 six months after final disposition of the action. At that time, both
34 originals may be destroyed, unless the court, on motion of any
35 party and for good cause shown, orders that the originals be
36 preserved for a longer period.

37 2031.300. If a party to whom an inspection demand is directed
38 fails to serve a timely response to it, the following rules apply:

39 (a) The party to whom the inspection demand is directed
40 waives any objection to the demand, including one based on

1 privilege or on the protection for work product under Chapter 4
2 (commencing with Section 2108.010). The court, on motion, may
3 relieve that party from this waiver on its determination that both
4 of the following conditions are satisfied:

5 (1) The party has subsequently served a response that is in
6 substantial compliance with Sections 2031.210, 2031.220,
7 2031.230, 2031.240, and 2031.280.

8 (2) The party's failure to serve a timely response was the result
9 of mistake, inadvertence, or excusable neglect.

10 (b) The party making the demand may move for an order
11 compelling response to the inspection demand.

12 (c) The court shall impose a monetary sanction under Chapter
13 7 (commencing with Section 2023.010) against any party, person,
14 or attorney who unsuccessfully makes or opposes a motion to
15 compel a response to an inspection demand, unless it finds that the
16 one subject to the sanction acted with substantial justification or
17 that other circumstances make the imposition of the sanction
18 unjust. If a party then fails to obey the order compelling a response,
19 the court may make those orders that are just, including the
20 imposition of an issue sanction, an evidence sanction, or a
21 terminating sanction under Chapter 7 (commencing with Section
22 2023.010). In lieu of or in addition to that sanction, the court may
23 impose a monetary sanction under Chapter 7 (commencing with
24 Section 2023.010).

25 2031.310. (a) On receipt of a response to an inspection
26 demand, the party demanding an inspection may move for an order
27 compelling further response to the demand if the demanding party
28 deems that any of the following apply:

29 (1) A statement of compliance with the demand is incomplete.

30 (2) A representation of inability to comply is inadequate,
31 incomplete, or evasive.

32 (3) An objection in the response is without merit or too general.

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

35 (1) The motion shall set forth specific facts showing good cause
36 justifying the discovery sought by the inspection demand.

37 (2) The motion shall be accompanied by a meet and confer
38 declaration under Section 2016.040.

39 (c) Unless notice of this motion is given within 45 days of the
40 service of the response, or any supplemental response, or on or

1 before any specific later date to which the demanding party and the
2 responding party have agreed in writing, the demanding party
3 waives any right to compel a further response to the inspection
4 demand.

5 (d) The court shall impose a monetary sanction under Chapter
6 7 (commencing with Section 2023.010) against any party, person,
7 or attorney who unsuccessfully makes or opposes a motion to
8 compel further response to an inspection demand, unless it finds
9 that the one subject to the sanction acted with substantial
10 justification or that other circumstances make the imposition of the
11 sanction unjust.

12 (e) If a party fails to obey an order compelling further response,
13 the court may make those orders that are just, including the
14 imposition of an issue sanction, an evidence sanction, or a
15 terminating sanction under Chapter 7 (commencing with Section
16 2023.010). In lieu of or in addition to that sanction, the court may
17 impose a monetary sanction under Chapter 7 (commencing with
18 Section 2023.010).

19 2031.320. (a) If a party filing a response to a demand for
20 inspection under Section 2031.210, 2031.220, 2031.230,
21 2031.240, and 2031.280 thereafter fails to permit the inspection in
22 accordance with that party's statement of compliance, the party
23 demanding the inspection may move for an order compelling
24 compliance.

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

32 (c) If a party then fails to obey an order compelling inspection,
33 the court may make those orders that are just, including the
34 imposition of an issue sanction, an evidence sanction, or a
35 terminating sanction under Chapter 7 (commencing with Section
36 2023.010). In lieu of or in addition to that sanction, the court may
37 impose a monetary sanction under Chapter 7 (commencing with
38 Section 2023.010).

39



Article 3. Inspection and Production of Documents and Other
Property in Specific Contexts

2031.510. (a) In any action, regardless of who is the moving party, where the boundary of land patented or otherwise granted by the state is in dispute, or the validity of any state patent or grant dated before 1950 is in dispute, all parties shall have the duty to disclose to all opposing parties all nonprivileged relevant written evidence then known and available, including evidence against interest, relating to the above issues.

(b) This evidence shall be disclosed within 120 days after the filing with the court of proof of service upon all named defendants. Thereafter, the parties shall have the continuing duty to make all subsequently discovered relevant and nonprivileged written evidence available to the opposing parties.

CHAPTER 15. PHYSICAL OR MENTAL EXAMINATION

Article 1. General Provisions

2032.010. (a) Nothing in this chapter affects tests under the Uniform Act on Blood Tests to Determine Paternity (Chapter 2 (commencing with Section 7550) of Part 2 of Division 12 of the Family Code).

(b) Nothing in this chapter requires the disclosure of the identity of an expert consulted by an attorney in order to make the certification required in an action for professional negligence under Sections 411.30 and 411.35.

2032.020. (a) Any party may obtain discovery, subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), by means of a physical or mental examination of (1) a party to the action, (2) an agent of any party, or (3) a natural person in the custody or under the legal control of a party, in any action in which the mental or physical condition (including the blood group) of that party or other person is in controversy in the action.

(b) A physical examination conducted under this chapter shall be performed only by a licensed physician or other appropriate licensed health care practitioner.

(c) A mental examination conducted under this chapter shall be performed only by a licensed physician, or by a licensed clinical

1 psychologist who holds a doctoral degree in psychology and has
2 had at least five years of postgraduate experience in the diagnosis
3 of emotional and mental disorders.

4
5 Article 2. Physical Examination of Personal Injury Plaintiff

6
7 2032.210. As used in this article, “plaintiff” includes a
8 cross-complainant, and “defendant” includes a cross-defendant.

9 2032.220. (a) In any case in which a plaintiff is seeking
10 recovery for personal injuries, any defendant may demand one
11 physical examination of the plaintiff, if both of the following
12 conditions are satisfied:

13 (1) The examination does not include any diagnostic test or
14 procedure that is painful, protracted, or intrusive.

15 (2) The examination is conducted at a location within 75 miles
16 of the residence of the examinee.

17 (b) A defendant may make a demand under this article without
18 leave of court after that defendant has been served or has appeared
19 in the action, whichever occurs first.

20 (c) A demand under subdivision (a) shall specify the time,
21 place, manner, conditions, scope, and nature of the examination,
22 as well as the identity and the specialty, if any, of the physician who
23 will perform the examination.

24 (d) A physical examination demanded under subdivision (a)
25 shall be scheduled for a date that is at least 30 days after service of
26 the demand. On motion of the party demanding the examination,
27 the court may shorten this time.

28 (e) The defendant shall serve a copy of the demand under
29 subdivision (a) on the plaintiff and on all other parties who have
30 appeared in the action.

31 2032.230. (a) The plaintiff to whom a demand for a physical
32 examination under this article is directed shall respond to the
33 demand by a written statement that the examinee will comply with
34 the demand as stated, will comply with the demand as specifically
35 modified by the plaintiff, or will refuse, for reasons specified in the
36 response, to submit to the demanded physical examination.

37 (b) Within 20 days after service of the demand the plaintiff to
38 whom the demand is directed shall serve the original of the
39 response to it on the defendant making the demand, and a copy of
40 the response on all other parties who have appeared in the action.

1 On motion of the defendant making the demand, the court may
2 shorten the time for response. On motion of the plaintiff to whom
3 the demand is directed, the court may extend the time for response.

4 2032.240. (a) If a plaintiff to whom a demand for a physical
5 examination under this article is directed fails to serve a timely
6 response to it, that plaintiff waives any objection to the demand.
7 The court, on motion, may relieve that plaintiff from this waiver
8 on its determination that both of the following conditions are
9 satisfied:

10 (1) The plaintiff has subsequently served a response that is in
11 substantial compliance with Section 2032.230.

12 (2) The plaintiff's failure to serve a timely response was the
13 result of mistake, inadvertence, or excusable neglect.

14 (b) The defendant may move for an order compelling response
15 and compliance with a demand for a physical examination.

16 (c) The court shall impose a monetary sanction under Chapter
17 7 (commencing with Section 2023.010) against any party, person,
18 or attorney who unsuccessfully makes or opposes a motion to
19 compel response and compliance with a demand for a physical
20 examination, unless it finds that the one subject to the sanction
21 acted with substantial justification or that other circumstances
22 make the imposition of the sanction unjust.

23 (d) If a plaintiff then fails to obey the order compelling
24 response and compliance, the court may make those orders that are
25 just, including the imposition of an issue sanction, an evidence
26 sanction, or a terminating sanction under Chapter 7 (commencing
27 with Section 2023.010). In lieu of or in addition to that sanction
28 the court may impose a monetary sanction under Chapter 7
29 (commencing with Section 2023.010).

30 2032.250. (a) If a defendant who has demanded a physical
31 examination under this article, on receipt of the plaintiff's
32 response to that demand, deems that any modification of the
33 demand, or any refusal to submit to the physical examination is
34 unwarranted, that defendant may move for an order compelling
35 compliance with the demand. This motion shall be accompanied
36 by a meet and confer declaration under Section 2016.040.

37 (b) The court shall impose a monetary sanction under Chapter
38 7 (commencing with Section 2023.010) against any party, person,
39 or attorney who unsuccessfully makes or opposes a motion to
40 compel compliance with a demand for a physical examination,

1 unless it finds that the one subject to the sanction acted with
2 substantial justification or that other circumstances make the
3 imposition of the sanction unjust.

4 2032.260. (a) The demand for a physical examination under
5 this article and the response to it shall not be filed with the court.

6 (b) The defendant shall retain both the original of the demand,
7 with the original proof of service affixed to it, and the original
8 response until six months after final disposition of the action. At
9 that time, the original may be destroyed, unless the court, on
10 motion of any party and for good cause shown, orders that the
11 originals be preserved for a longer period.

12 Article 3. Motion for Physical or Mental Examination

14 2032.310. (a) If any party desires to obtain discovery by a
15 physical examination other than that described in Article 2
16 (commencing with Section 2032.210), or by a mental
17 examination, the party shall obtain leave of court.

18 (b) A motion for an examination under subdivision (a) shall
19 specify the time, place, manner, conditions, scope, and nature of
20 the examination, as well as the identity and the specialty, if any, of
21 the person or persons who will perform the examination. The
22 motion shall be accompanied by a meet and confer declaration
23 under Section 2016.040.

24 (c) Notice of the motion shall be served on the person to be
25 examined and on all parties who have appeared in the action.

26 2032.320. (a) The court shall grant a motion for a physical or
27 mental examination under Section 2032.310 only for good cause
28 shown.

29 (b) If a party stipulates as provided in subdivision (c), the court
30 shall not order a mental examination of a person for whose
31 personal injuries a recovery is being sought except on a showing
32 of exceptional circumstances.

33 (c) A stipulation by a party under this subdivision shall include
34 both of the following:

35 (1) A stipulation that no claim is being made for mental and
36 emotional distress over and above that usually associated with the
37 physical injuries claimed.
38

(2) A stipulation that no expert testimony regarding this usual mental and emotional distress will be presented at trial in support of the claim for damages.

(d) An order granting a physical or mental examination shall specify the person or persons who may perform the examination, as well as the time, place, manner, diagnostic tests and procedures, conditions, scope, and nature of the examination.

(e) If the place of the examination is more than 75 miles from the residence of the person to be examined, an order to submit to it shall be entered only if both of the following conditions are satisfied:

(1) The court determines that there is good cause for the travel involved.

(2) The order is conditioned on the advancement by the moving party of the reasonable expenses and costs to the examinee for travel to the place of examination.

Article 4. Failure To Submit To or Produce Another for
Physical or Mental Examination

2032.410. If a party is required to submit to a physical or mental examination under Articles 2 (commencing with Section 2032.210) or 3 (commencing with Section 2032.310), or under Section 2016.030, but fails to do so, the court, on motion of the party entitled to the examination, may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to that sanction, the court may, on motion of the party, impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

2032.420. If a party is required to produce another for a physical or mental examination under Articles 2 (commencing with Section 2032.210) or 3 (commencing with Section 2032.310), or under Section 2032.030, but fails to do so, the court, on motion of the party entitled to the examination, may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010), unless the party failing to comply demonstrates an inability to produce that person for examination. In lieu of or in addition to that sanction, the court may

1 impose a monetary sanction under Chapter 7 (commencing with
2 Section 2023.010).

3
4 Article 5. Conduct of Examination
5

6 2032.510. (a) The attorney for the examinee or for a party
7 producing the examinee, or that attorney's representative, shall be
8 permitted to attend and observe any physical examination
9 conducted for discovery purposes, and to record stenographically
10 or by audiotape any words spoken to or by the examinee during any
11 phase of the examination.

12 (b) The observer under subdivision (a) may monitor the
13 examination, but shall not participate in or disrupt it.

14 (c) If an attorney's representative is to serve as the observer, the
15 representative shall be authorized to so act by a writing subscribed
16 by the attorney which identifies the representative.

17 (d) If in the judgment of the observer the examiner becomes
18 abusive to the examinee or undertakes to engage in unauthorized
19 diagnostic tests and procedures, the observer may suspend it to
20 enable the party being examined or producing the examinee to
21 make a motion for a protective order.

22 (e) If the observer begins to participate in or disrupt the
23 examination, the person conducting the physical examination may
24 suspend the examination to enable the party at whose instance it
25 is being conducted to move for a protective order.

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

32 2032.520. If an examinee submits or authorizes access to
33 X-rays of any area of his or her body for inspection by the
34 examining physician, no additional X-rays of that area may be
35 taken by the examining physician except with consent of the
36 examinee or on order of the court for good cause shown.

37 2032.530. (a) The examiner and examinee shall have the
38 right to record a mental examination on audiotape.

39 (b) Nothing in this title shall be construed to alter, amend, or
40 affect existing case law with respect to the presence of the attorney

1 for the examinee or other persons during the examination by
2 agreement or court order.

3
4 Article 6. Reports of Examination
5

6 2032.610. (a) If a party submits to, or produces another for,
7 a physical or mental examination in compliance with a demand
8 under Article 2 (commencing with Section 2032.210), an order of
9 court under Article 3 (commencing with Section 2032.310), or an
10 agreement under Section 2016.030, that party has the option of
11 making a written demand that the party at whose instance the
12 examination was made deliver both of the following to the
13 demanding party:

14 (1) A copy of a detailed written report setting out the history,
15 examinations, findings, including the results of all tests made,
16 diagnoses, prognoses, and conclusions of the examiner.

17 (2) A copy of reports of all earlier examinations of the same
18 condition of the examinee made by that or any other examiner.

19 (b) If the option under subdivision (a) is exercised, a copy of the
20 requested reports shall be delivered within 30 days after service of
21 the demand, or within 15 days of trial, whichever is earlier.

22 (c) In the circumstances described in subdivision (a), the
23 protection for work product under Chapter 4 (commencing with
24 Section 2018.010) is waived, both for the examiner's writings and
25 reports and to the taking of the examiner's testimony.

26 2032.620. (a) If the party at whose instance an examination
27 was made fails to make a timely delivery of the reports demanded
28 under Section 2032.610, the demanding party may move for an
29 order compelling their delivery. This motion shall be accompanied
30 by a meet and confer declaration under Section 2016.040.

31 (b) The court shall impose a monetary sanction under Chapter
32 7 (commencing with Section 2023.010) against any party, person,
33 or attorney who unsuccessfully makes or opposes a motion to
34 compel delivery of medical reports under this section, unless it
35 finds that the one subject to the sanction acted with substantial
36 justification or that other circumstances make the imposition of the
37 sanction unjust.

38 (c) If a party then fails to obey an order compelling delivery of
39 demanded medical reports, the court may make those orders that
40 are just, including the imposition of an issue sanction, an evidence

1 sanction, or a terminating sanction under Chapter 7 (commencing
2 with Section 2023.010). In lieu of or in addition to those sanctions,
3 the court may impose a monetary sanction under Chapter 7
4 (commencing with Section 2023.010). The court shall exclude at
5 trial the testimony of any examiner whose report has not been
6 provided by a party.

7 2032.630. By demanding and obtaining a report of a physical
8 or mental examination under Section 2032.610 or 2032.620, or by
9 taking the deposition of the examiner, other than under Article 3
10 (commencing with Section 2034.410) of Chapter 18, the party
11 who submitted to, or produced another for, a physical or mental
12 examination waives in the pending action, and in any other action
13 involving the same controversy, any privilege, as well as any
14 protection for work product under Chapter 4 (commencing with
15 Section 2018.010), that the party or other examinee may have
16 regarding reports and writings as well as the testimony of every
17 other physician, psychologist, or licensed health care practitioner
18 who has examined or may thereafter examine the party or other
19 examinee in respect of the same physical or mental condition.

20 2032.640. A party receiving a demand for a report under
21 Section 2032.610 is entitled at the time of compliance to receive
22 in exchange a copy of any existing written report of any
23 examination of the same condition by any other physician,
24 psychologist, or licensed health care practitioner. In addition, that
25 party is entitled to receive promptly any later report of any
26 previous or subsequent examination of the same condition, by any
27 physician, psychologist, or licensed health care practitioner.

28 2032.650. (a) If a party who has demanded and received
29 delivery of medical reports under Section 2032.610 fails to deliver
30 existing or later reports of previous or subsequent examinations
31 under Section 2032.640, a party who has complied with Section
32 2032.610 may move for an order compelling delivery of medical
33 reports. This motion shall be accompanied by a meet and confer
34 declaration under Section 2016.040.

35 (b) The court shall impose a monetary sanction under Chapter
36 7 (commencing with Section 2023.010) against any party, person,
37 or attorney who unsuccessfully makes or opposes a motion to
38 compel delivery of medical reports under this section, unless it
39 finds that the one subject to the sanction acted with substantial

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

3 (c) If a party then fails to obey an order compelling delivery of
4 medical reports, the court may make those orders that are just,
5 including the imposition of an issue sanction, an evidence
6 sanction, or a terminating sanction under Chapter 7 (commencing
7 with Section 2023.010). In lieu of or in addition to the sanction,
8 the court may impose a monetary sanction under Chapter 7
9 (commencing with Section 2023.010). The court shall exclude at
10 trial the testimony of any health care practitioner whose report has
11 not been provided by a party ordered to do so by the court.

12
13 CHAPTER 16. REQUESTS FOR ADMISSION
14

15 Article 1. Requests For Admission
16

17 2033.010. Any party may obtain discovery within the scope
18 delimited by Chapters 2 (commencing with Section 2017.010) and
19 3 (commencing with Section 2017.710), and subject to the
20 restrictions set forth in Chapter 5 (commencing with Section
21 2019.010), by a written request that any other party to the action
22 admit the genuineness of specified documents, or the truth of
23 specified matters of fact, opinion relating to fact, or application of
24 law to fact. A request for admission may relate to a matter that is
25 in controversy between the parties.

26 2033.020. (a) A defendant may make requests for admission
27 by a party without leave of court at any time.

28 (b) A plaintiff may make requests for admission by a party
29 without leave of court at any time that is 10 days after the service
30 of the summons on, or, in unlawful detainer actions, five days after
31 the service of the summons on, or appearance by, that party,
32 whichever occurs first.

33 (c) Notwithstanding subdivision (b), on motion with or without
34 notice, the court, for good cause shown, may grant leave to a
35 plaintiff to make requests for admission at an earlier time.

36 2033.030. (a) No party shall request, as a matter of right, that
37 any other party admit more than 35 matters that do not relate to the
38 genuineness of documents. If the initial set of admission requests
39 does not exhaust this limit, the balance may be requested in
40 subsequent sets.

(b) Unless a declaration as described in Section 2033.050 has been made, a party need only respond to the first 35 admission requests served that do not relate to the genuineness of documents, if that party states an objection to the balance under Section 2033.230 on the ground that the limit has been exceeded.

(c) The number of requests for admission of the genuineness of documents is not limited except as justice requires to protect the responding party from unwarranted annoyance, embarrassment, oppression, or undue burden and expense.

2033.040. (a) Subject to the right of the responding party to seek a protective order under Section 2033.080, any party who attaches a supporting declaration as described in Section 2033.050 may request a greater number of admissions by another party if the greater number is warranted by the complexity or the quantity of the existing and potential issues in the particular case.

(b) If the responding party seeks a protective order on the ground that the number of requests for admission is unwarranted, the propounding party shall have the burden of justifying the number of requests for admission.

2033.050. Any party who is requesting or who has already requested more than 35 admissions not relating to the genuineness of documents by any other party shall attach to each set of requests for admissions a declaration containing substantially the following words:

DECLARATION FOR ADDITIONAL DISCOVERY

I, _____, declare:

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

2. I am propounding to _____ the attached set of requests for admission.

3. This set of requests for admission will cause the total number of requests propounded to the party to whom they are directed to exceed the number of requests permitted by Section 2033.030 of the Code of Civil Procedure.

4. I have previously propounded a total of _____ requests for admission to this party.

1 5. This set of requests for admission contains a total of
2 _____ requests.

3 6. I am familiar with the issues and the previous discovery
4 conducted by all of the parties in this case.

5 7. I have personally examined each of the requests in this set of
6 requests for admission.

7 8. This number of requests for admission is warranted under
8 Section 2033.040 of the Code of Civil Procedure because
9 _____. (Here state the reasons why the complexity or the
10 quantity of issues in the instant lawsuit warrant this number of
11 requests for admission.)

12 9. None of the requests in this set of requests is being propounded
13 for any improper purpose, such as to harass the party, or the
14 attorney for the party, to whom it is directed, or to cause
15 unnecessary delay or needless increase in the cost of litigation.

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

19
20 _____
21 (Signature)

22
23 Attorney for _____
24

25 2033.060. (a) A party requesting admissions shall number
26 each set of requests consecutively.

27 (b) In the first paragraph immediately below the title of the
28 case, there shall appear the identity of the party requesting the
29 admissions, the set number, and the identity of the responding
30 party.

31 (c) Each request for admission in a set shall be separately set
32 forth and identified by letter or number.

33 (d) Each request for admission shall be full and complete in and
34 of itself. No preface or instruction shall be included with a set of
35 admission requests unless it has been approved under Chapter 17
36 (commencing with Section 2033.710).

37 (e) Any term specially defined in a request for admission shall
38 be typed with all letters capitalized whenever the term appears.

1 (f) No request for admission shall contain subparts, or a
2 compound, conjunctive, or disjunctive request unless it has been
3 approved under Chapter 17 (commencing with Section 2033.710).

4 (g) A party requesting an admission of the genuineness of any
5 documents shall attach copies of those documents to the requests,
6 and shall make the original of those documents available for
7 inspection on demand by the party to whom the requests for
8 admission are directed.

9 (h) No party shall combine in a single document requests for
10 admission with any other method of discovery.

11 2033.070. The party requesting admissions shall serve a copy
12 of them on the party to whom they are directed and on all other
13 parties who have appeared in the action.

14 2033.080. (a) When requests for admission have been made,
15 the responding party may promptly move for a protective order.
16 This motion shall be accompanied by a meet and confer
17 declaration under Section 2016.040.

18 (b) The court, for good cause shown, may make any order that
19 justice requires to protect any party from unwarranted annoyance,
20 embarrassment, oppression, or undue burden and expense. This
21 protective order may include, but is not limited to, one or more of
22 the following directions:

23 (1) That the set of admission requests, or particular requests in
24 the set, need not be answered at all.

25 (2) That, contrary to the representations made in a declaration
26 submitted under Section 2033.050, the number of admission
27 requests is unwarranted.

28 (3) That the time specified in Section 2033.250 to respond to
29 the set of admission requests, or to particular requests in the set,
30 be extended.

31 (4) That a trade secret or other confidential research,
32 development, or commercial information not be admitted or be
33 admitted only in a certain way.

34 (5) That some or all of the answers to requests for admission be
35 sealed and thereafter opened only on order of the court.

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



1 (d) The court shall impose a monetary sanction under Chapter
2 7 (commencing with Section 2023.010) against any party, person,
3 or attorney who unsuccessfully makes or opposes a motion for a
4 protective order under this section, unless it finds that the one
5 subject to the sanction acted with substantial justification or that
6 other circumstances make the imposition of the sanction unjust.

7
8 Article 2. Response to Requests For Admission
9

10 2033.210. (a) The party to whom requests for admission
11 have been directed shall respond in writing under oath separately
12 to each request.

13 (b) Each response shall answer the substance of the requested
14 admission, or set forth an objection to the particular request.

15 (c) In the first paragraph of the response immediately below the
16 title of the case, there shall appear the identity of the responding
17 party, the set number, and the identity of the requesting party.

18 (d) Each answer or objection in the response shall bear the same
19 identifying number or letter and be in the same sequence as the
20 corresponding request, but the text of the particular request need
21 not be repeated.

22 2033.220. (a) Each answer in a response to requests for
23 admission shall be as complete and straightforward as the
24 information reasonably available to the responding party permits.

25 (b) Each answer shall:

26 (1) Admit so much of the matter involved in the request as is
27 true, either as expressed in the request itself or as reasonably and
28 clearly qualified by the responding party.

29 (2) Deny so much of the matter involved in the request as is
30 untrue.

31 (3) Specify so much of the matter involved in the request as to
32 the \ truth of which the responding party lacks sufficient
33 information or knowledge.

34 (c) If a responding party gives lack of information or
35 knowledge as a reason for a failure to admit all or part of a request
36 for admission, that party shall state in the answer that a reasonable
37 inquiry concerning the matter in the particular request has been
38 made, and that the information known or readily obtainable is
39 insufficient to enable that party to admit the matter.

1 2033.230. (a) If only a part of a request for admission is
2 objectionable, the remainder of the request shall be answered.

3 (b) If an objection is made to a request or to a part of a request,
4 the specific ground for the objection shall be set forth clearly in the
5 response. If an objection is based on a claim of privilege, the
6 particular privilege invoked shall be clearly stated. If an objection
7 is based on a claim that the matter as to which an admission is
8 requested is protected work product under Chapter 4
9 (commencing with Section 2018.010), that claim shall be
10 expressly asserted.

11 2033.240. (a) The party to whom the requests for admission
12 are directed shall sign the response under oath, unless the response
13 contains only objections.

14 (b) If that party is a public or private corporation, or a
15 partnership or association or governmental agency, one of its
16 officers or agents shall sign the response under oath on behalf of
17 that party. If the officer or agent signing the response on behalf of
18 that party is an attorney acting in that capacity for the party, that
19 party waives any lawyer-client privilege and any protection for
20 work product under Chapter 4 (commencing with Section
21 2018.010) during any subsequent discovery from that attorney
22 concerning the identity of the sources of the information contained
23 in the response.

24 (c) The attorney for the responding party shall sign any
25 response that contains an objection.

26 2033.250. Within 30 days after service of requests for
27 admission, or in unlawful detainer actions within five days after
28 service of requests for admission, the party to whom the requests
29 are directed shall serve the original of the response to them on the
30 requesting party, and a copy of the response on all other parties
31 who have appeared, unless on motion of the requesting party the
32 court has shortened the time for response, or unless on motion of
33 the responding party the court has extended the time for response.
34 In unlawful detainer actions, the party to whom the request is
35 directed shall have at least five days from the date of service to
36 respond unless on motion of the requesting party the court has
37 shortened the time for response.

38 2033.260. (a) The party requesting admissions and the
39 responding party may agree to extend the time for service of a

1 response to a set of admission requests, or to particular requests in
2 a set, to a date beyond that provided in Section 2033.250.

3 (b) This agreement may be informal, but it shall be confirmed
4 in a writing that specifies the extended date for service of a
5 response.

6 (c) Unless this agreement expressly states otherwise, it is
7 effective to preserve to the responding party the right to respond
8 to any request for admission to which the agreement applies in any
9 manner specified in Sections 2033.210, 2033.220, and 2033.230.

10 (d) Notice of this agreement shall be given by the responding
11 party to all other parties who were served with a copy of the
12 request.

13 2033.270. (a) The requests for admission and the response to
14 them shall not be filed with the court.

15 (b) The party requesting admissions shall retain both the
16 original of the requests for admission, with the original proof of
17 service affixed to them, and the original of the sworn response until
18 six months after final disposition of the action. At that time, both
19 originals may be destroyed, unless the court, on motion of any
20 party and for good cause shown, orders that the originals be
21 preserved for a longer period.

22 2033.280. If a party to whom requests for admission are
23 directed fails to serve a timely response, the following rules apply:

24 (a) The party to whom the requests for admission are directed
25 waives any objection to the requests, including one based on
26 privilege or on the protection for work product under Chapter 4
27 (commencing with Section 2018.010). The court, on motion, may
28 relieve that party from this waiver on its determination that both
29 of the following conditions are satisfied:

30 (1) The party has subsequently served a response that is in
31 substantial compliance with Sections 2033.210, 2033.220, and
32 2033.230.

33 (2) The party's failure to serve a timely response was the result
34 of mistake, inadvertence, or excusable neglect.

35 (b) The requesting party may move for an order that the
36 genuineness of any documents and the truth of any matters
37 specified in the requests be deemed admitted, as well as for a
38 monetary sanction under Chapter 7 (commencing with Section
39 2023.010).

(c) The court shall make this order, unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.100. It is mandatory that the court impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion.

2033.290. (a) On receipt of a response to requests for admissions, the party requesting admissions may move for an order compelling a further response if that party deems that either or both of the following apply:

(1) An answer to a particular request is evasive or incomplete.

(2) An objection to a particular request is without merit or too general.

(b) A motion under subdivision (a) shall be accompanied by a meet and confer declaration under Section 2016.040.

(c) Unless notice of this motion is given within 45 days of the service of the response, or any supplemental response, or any specific later date to which the requesting party and the responding party have agreed in writing, the requesting party waives any right to compel further response to the requests for admission.

(d) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response, 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) If a party then fails to obey an order compelling further response to requests for admission, the court may order that the matters involved in the requests be deemed admitted. In lieu of or in addition to this order, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

2033.300. (a) A party may withdraw or amend an admission made in response to a request for admission only on leave of court granted after notice to all parties.

(b) The court may permit withdrawal or amendment of an admission only if it determines that the admission was the result of mistake, inadvertence, or excusable neglect, and that the party

1 who obtained the admission will not be substantially prejudiced in
2 maintaining that party's action or defense on the merits.

3 (c) The court may impose conditions on the granting of the
4 motion that are just, including, but not limited to, the following:

5 (1) An order that the party who obtained the admission be
6 permitted to pursue additional discovery related to the matter
7 involved in the withdrawn or amended admission.

8 (2) An order that the costs of any additional discovery be borne
9 in whole or in part by the party withdrawing or amending the
10 admission.

11
12 Article 3. Effect of Admission
13

14 2033.410. (a) Any matter admitted in response to a request
15 for admission is conclusively established against the party making
16 the admission in the pending action, unless the court has permitted
17 withdrawal or amendment of that admission under Section
18 2033.300.

19 (b) Notwithstanding subdivision (a), any admission made by a
20 party under this section is binding only on that party and is made
21 for the purpose of the pending action only. It is not an admission
22 by that party for any other purpose, and it shall not be used in any
23 manner against that party in any other proceeding.

24 2033.420. (a) If a party fails to admit the genuineness of any
25 document or the truth of any matter when requested to do so under
26 this chapter, and if the party requesting that admission thereafter
27 proves the genuineness of that document or the truth of that matter,
28 the party requesting the admission may move the court for an order
29 requiring the party to whom the request was directed to pay the
30 reasonable expenses incurred in making that proof, including
31 reasonable attorney's fees.

32 (b) The court shall make this order unless it finds any of the
33 following:

34 (1) An objection to the request was sustained or a response to
35 it was waived under Section 2033.290.

36 (2) The admission sought was of no substantial importance.

37 (3) The party failing to make the admission had reasonable
38 ground to believe that that party would prevail on the matter.

39 (4) There was other good reason for the failure to admit.
40

1 CHAPTER 17. FORM INTERROGATORIES AND REQUESTS FOR
2 ADMISSION
3

4 2033.710. The Judicial Council shall develop and approve
5 official form interrogatories and requests for admission of the
6 genuineness of any relevant documents or of the truth of any
7 relevant matters of fact for use in any civil action in a state court
8 based on personal injury, property damage, wrongful death,
9 unlawful detainer, breach of contract, family law, or fraud and for
10 any other civil actions the Judicial Council deems appropriate.

11 2033.720. (a) The Judicial Council shall develop and
12 approve official form interrogatories for use by a victim who has
13 not received complete payment of a restitution order made
14 pursuant to Section 1202.4 of the Penal Code.

15 (b) Notwithstanding whether a victim initiates or maintains an
16 action to satisfy the unpaid restitution order, a victim may
17 propound the form interrogatories approved pursuant to this
18 section once each calendar year. The defendant subject to the
19 restitution order shall, in responding to the interrogatories
20 propounded, provide current information regarding the nature,
21 extent, and location of any assets, income, and liabilities in which
22 the defendant claims a present or future interest.

23 2033.730. (a) In developing the form interrogatories and
24 requests for admission required by Sections 2033.710 and
25 2033.720, the Judicial Council shall consult with a representative
26 advisory committee which shall include, but not be limited to,
27 representatives of all of the following:

- 28 (1) The plaintiff's bar.
29 (2) The defense bar.
30 (3) The public interest bar.
31 (4) Court administrators.
32 (5) The public.

33 (b) The form interrogatories and requests for admission shall
34 be drafted in nontechnical language.

35 2033.740. (a) Use of the form interrogatories and requests
36 for admission approved by the Judicial Council shall be optional.

37 (b) The form interrogatories and requests for admission shall
38 be made available through the office of the clerk of the appropriate
39 trial court.

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

4
5 CHAPTER 18. SIMULTANEOUS EXCHANGE OF EXPERT WITNESS
6 INFORMATION

7
8 Article 1. General Provisions
9

10 2034.010. This chapter does not apply to exchanges of lists of
11 experts and valuation data in eminent domain proceedings under
12 Chapter 7 (commencing with Section 1258.010) of Title 7 of Part
13 3.

14
15 Article 2. Demand for Exchange of Expert Witness
16 Information
17

18 2034.210. After the setting of the initial trial date for the
19 action, any party may obtain discovery by demanding that all
20 parties simultaneously exchange information concerning each
21 other's expert trial witnesses to the following extent:

22 (a) Any party may demand a mutual and simultaneous
23 exchange by all parties of a list containing the name and address
24 of any natural person, including one who is a party, whose oral or
25 deposition testimony in the form of an expert opinion any party
26 expects to offer in evidence at the trial.

27 (b) If any expert designated by a party under subdivision (a) is
28 a party or an employee of a party, or has been retained by a party
29 for the purpose of forming and expressing an opinion in
30 anticipation of the litigation or in preparation for the trial of the
31 action, the designation of that witness shall include or be
32 accompanied by an expert witness declaration under Section
33 2034.260.

34 (c) Any party may also include a demand for the mutual and
35 simultaneous production for inspection and copying of all
36 discoverable reports and writings, if any, made by any expert
37 described in subdivision (b) in the course of preparing that expert's
38 opinion.

39 2034.220. Any party may make a demand for an exchange of
40 information concerning expert trial witnesses without leave of

1 court. A party shall make this demand no later than the 10th day
2 after the initial trial date has been set, or 70 days before that trial
3 date, whichever is closer to the trial date.

4 2034.230. (a) A demand for an exchange of information
5 concerning expert trial witnesses shall be in writing and shall
6 identify, below the title of the case, the party making the demand.
7 The demand shall state that it is being made under this chapter.

8 (b) The demand shall specify the date for the exchange of lists
9 of expert trial witnesses, expert witness declarations, and any
10 demanded production of writings. The specified date of exchange
11 shall be 50 days before the initial trial date, or 20 days after service
12 of the demand, whichever is closer to the trial date, unless the
13 court, on motion and a showing of good cause, orders an earlier or
14 later date of exchange.

15 2034.240. The party demanding an exchange of information
16 concerning expert trial witnesses shall serve the demand on all
17 parties who have appeared in the action.

18 2034.250. (a) A party who has been served with a demand to
19 exchange information concerning expert trial witnesses may
20 promptly move for a protective order. This motion shall be
21 accompanied by a meet and confer declaration under Section
22 2016.040.

23 (b) The court, for good cause shown, may make any order that
24 justice requires to protect any party from unwarranted annoyance,
25 embarrassment, oppression, or undue burden and expense. The
26 protective order may include, but is not limited to, one or more of
27 the following directions:

28 (1) That the demand be quashed because it was not timely
29 served.

30 (2) That the date of exchange be earlier or later than that
31 specified in the demand.

32 (3) That the exchange be made only on specified terms and
33 conditions.

34 (4) That the production and exchange of any reports and
35 writings of experts be made at a different place or at a different
36 time than specified in the demand.

37 (5) That some or all of the parties be divided into sides on the
38 basis of their identity of interest in the issues in the action, and that
39 the designation of any experts as described in subdivision (b) of
40 Section 2034.210 be made by any side so created.



1 (6) That a party or a side reduce the list of employed or retained
2 experts designated by that party or side under subdivision (b) of
3 Section 2034.210.

4 (c) If the motion for a protective order is denied in whole or in
5 part, the court may order that the parties against whom the motion
6 is brought, provide or permit the discovery against which the
7 protection was sought on those terms and conditions that are just.

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

14 2034.260. (a) All parties who have appeared in the action
15 shall exchange information concerning expert witnesses in writing
16 on or before the date of exchange specified in the demand. The
17 exchange of information may occur at a meeting of the attorneys
18 for the parties involved or by a mailing on or before the date of
19 exchange.

20 (b) The exchange of expert witness information shall include
21 either of the following:

22 (1) A list setting forth the name and address of any person
23 whose expert opinion that party expects to offer in evidence at the
24 trial.

25 (2) A statement that the party does not presently intend to offer
26 the testimony of any expert witness.

27 (c) If any witness on the list is an expert as described in
28 subdivision (b) of Section 2034.210, the exchange shall also
29 include or be accompanied by an expert witness declaration signed
30 only by the attorney for the party designating the expert, or by that
31 party if that party has no attorney. This declaration shall be under
32 penalty of perjury and shall contain:

33 (1) A brief narrative statement of the qualifications of each
34 expert.

35 (2) A brief narrative statement of the general substance of the
36 testimony that the expert is expected to give.

37 (3) A representation that the expert has agreed to testify at the
38 trial.

39 (4) A representation that the expert will be sufficiently familiar
40 with the pending action to submit to a meaningful oral deposition

1 concerning the specific testimony, including any opinion and its
2 basis, that the expert is expected to give at trial.

3 (5) A statement of the expert's hourly and daily fee for
4 providing deposition testimony and for consulting with the
5 retaining attorney.

6 2034.270. If a demand for an exchange of information
7 concerning expert trial witnesses includes a demand for
8 production of reports and writings as described in subdivision (c)
9 of Section 2034.210, all parties shall produce and exchange, at the
10 place and on the date specified in the demand, all discoverable
11 reports and writings, if any, made by any designated expert
12 described in subdivision (b) of Section 2034.210.

13 2034.280. (a) Within 20 days after the exchange described in
14 Section 2034.260, any party who engaged in the exchange may
15 submit a supplemental expert witness list containing the name and
16 address of any experts who will express an opinion on a subject to
17 be covered by an expert designated by an adverse party to the
18 exchange, if the party supplementing an expert witness list has not
19 previously retained an expert to testify on that subject.

20 (b) This supplemental list shall be accompanied by an expert
21 witness declaration under subdivision (c) of Section 2034.260
22 concerning those additional experts, and by all discoverable
23 reports and writings, if any, made by those additional experts.

24 (c) The party shall also make those experts available
25 immediately for a deposition under Article 3 (commencing with
26 Section 2034.410), which deposition may be taken even though
27 the time limit for discovery under Chapter 8 (commencing with
28 Section 2024.010) has expired.

29 2034.290. (a) A demand for an exchange of information
30 concerning expert trial witnesses, and any expert witness lists and
31 declarations exchanged shall not be filed with the court.

32 (b) The party demanding the exchange shall retain both the
33 original of the demand, with the original proof of service affixed,
34 and the original of all expert witness lists and declarations
35 exchanged in response to the demand until six months after final
36 disposition of the action. At that time, all originals may be
37 destroyed unless the court, on motion of any party and for good
38 cause shown, orders that the originals be preserved for a longer
39 period.



1 (c) Notwithstanding subdivisions (a) and (b), a demand for
2 exchange of information concerning expert trial witnesses, and all
3 expert witness lists and declarations exchanged in response to it,
4 shall be lodged with the court when their contents become relevant
5 to an issue in any pending matter in the action.

6 2034.300. Except as provided in Section 2034.310 and in
7 Articles 4 (commencing with Section 2034.610) and 5
8 (commencing with Section 2034.710), on objection of any party
9 who has made a complete and timely compliance with Section
10 2034.260, the trial court shall exclude from evidence the expert
11 opinion of any witness that is offered by any party who has
12 unreasonably failed to do any of the following:

13 (a) List that witness as an expert under Section 2034.260.

14 (b) Submit an expert witness declaration.

15 (c) Produce reports and writings of expert witnesses under
16 Section 2034.270.

17 (d) Make that expert available for a deposition under Article 3
18 (commencing with Section 2034.410).

19 2034.310. A party may call as a witness at trial an expert not
20 previously designated by that party if either of the following
21 conditions is satisfied:

22 (a) That expert has been designated by another party and has
23 thereafter been deposed under Article 3 (commencing with
24 Section 2034.410).

25 (b) That expert is called as a witness to impeach the testimony
26 of an expert witness offered by any other party at the trial. This
27 impeachment may include testimony to the falsity or nonexistence
28 of any fact used as the foundation for any opinion by any other
29 party's expert witness, but may not include testimony that
30 contradicts the opinion.

31
32 Article 3. Deposition of Expert Witness
33

34 2034.410. On receipt of an expert witness list from a party,
35 any other party may take the deposition of any person on the list.
36 The procedures for taking oral and written depositions set forth in
37 Chapters 9 (commencing with Section 2025.010), 10
38 (commencing with Section 2026.010), and 11 (commencing with
39 Section 2028.010) apply to a deposition of a listed trial expert
40 witness except as provided in this article.

1 2034.420. The deposition of any expert described in
2 subdivision (b) of Section 2034.260 shall be taken at a place that
3 is within 75 miles of the courthouse where the action is pending.
4 On motion for a protective order by the party designating an expert
5 witness, and on a showing of exceptional hardship, the court may
6 order that the deposition be taken at a more distant place from the
7 courthouse.

8 2034.430. (a) Except as provided in subdivision (f), this
9 section applies to an expert witness, other than a party or an
10 employee of a party, who is any of the following:

11 (1) An expert described in subdivision (b) of Section 2034.260.

12 (2) A treating physician and surgeon or other treating health
13 care practitioner who is to be asked during the deposition to
14 express opinion testimony, including opinion or factual testimony
15 regarding the past or present diagnosis or prognosis made by the
16 practitioner or the reasons for a particular treatment decision made
17 by the practitioner, but not including testimony requiring only the
18 reading of words and symbols contained in the relevant medical
19 record or, if those words and symbols are not legible to the
20 deponent, the approximation by the deponent of what those words
21 or symbols are.

22 (3) An architect, professional engineer, or licensed land
23 surveyor who was involved with the original project design or
24 survey for which that person is asked to express an opinion within
25 the person's expertise and relevant to the action or proceeding.

26 (b) A party desiring to depose an expert witness described in
27 subdivision (a) shall pay the expert's reasonable and customary
28 hourly or daily fee for any time spent at the deposition from the
29 time noticed in the deposition subpoena, or from the time of the
30 arrival of the expert witness should that time be later than the time
31 noticed in the deposition subpoena, until the time the expert
32 witness is dismissed from the deposition, regardless of whether the
33 expert is actually deposed by any party attending the deposition.

34 (c) If any counsel representing the expert or a nonnoticing party
35 is late to the deposition, the expert's reasonable and customary
36 hourly or daily fee for the time period determined from the time
37 noticed in the deposition subpoena until the counsel's late arrival,
38 shall be paid by that tardy counsel.

39 (d) Notwithstanding subdivision (c), the hourly or daily fee
40 charged to the tardy counsel shall not exceed the fee charged to the

1 party who retained the expert, except where the expert donated
2 services to a charitable or other nonprofit organization.

3 (e) A daily fee shall only be charged for a full day of attendance
4 at a deposition or where the expert was required by the deposing
5 party to be available for a full day and the expert necessarily had
6 to forego all business that the expert would otherwise have
7 conducted that day but for the request that the expert be available
8 all day for the scheduled deposition.

9 (f) In a worker's compensation case arising under Division 4
10 (commencing with Section 3201) or Division 4.5 (commencing
11 with Section 6100) of the Labor Code, a party desiring to depose
12 any expert on another party's expert witness list shall pay the fee
13 under this section.

14 2034.440. The party designating an expert is responsible for
15 any fee charged by the expert for preparing for a deposition and for
16 traveling to the place of the deposition, as well as for any travel
17 expenses of the expert.

18 2034.450. (a) The party taking the deposition of an expert
19 witness shall either accompany the service of the deposition notice
20 with a tender of the expert's fee based on the anticipated length of
21 the deposition, or tender that fee at the commencement of the
22 deposition.

23 (b) The expert's fee shall be delivered to the attorney for the
24 party designating the expert.

25 (c) If the deposition of the expert takes longer than anticipated,
26 the party giving notice of the deposition shall pay the balance of
27 the expert's fee within five days of receipt of an itemized statement
28 from the expert.

29 2034.460. (a) The service of a proper deposition notice
30 accompanied by the tender of the expert witness fee described in
31 Section 2034.430 is effective to require the party employing or
32 retaining the expert to produce the expert for the deposition.

33 (b) If the party noticing the deposition fails to tender the
34 expert's fee under Section 2034.430, the expert shall not be
35 deposed at that time unless the parties stipulate otherwise.

36 2034.470. (a) If a party desiring to take the deposition of an
37 expert witness under this article deems that the hourly or daily fee
38 of that expert for providing deposition testimony is unreasonable,
39 that party may move for an order setting the compensation of that
40 expert. Notice of this motion shall also be given to the expert.

(b) A motion under subdivision (a) shall be accompanied by a meet and confer declaration under Section 2016.040. In any attempt at an informal resolution under Section 2016.040, either the party or the expert shall provide the other with all of the following:

(1) Proof of the ordinary and customary fee actually charged and received by that expert for similar services provided outside the subject litigation.

(2) The total number of times the presently demanded fee has ever been charged and received by that expert.

(3) The frequency and regularity with which the presently demanded fee has been charged and received by that expert within the two-year period preceding the hearing on the motion.

(c) In addition to any other facts or evidence, the expert or the party designating the expert shall provide, and the court's determination as to the reasonableness of the fee shall be based on, proof of the ordinary and customary fee actually charged and received by that expert for similar services provided outside the subject litigation.

(d) In an action filed after January 1, 1994, the expert or the party designating the expert shall also provide, and the court's determination as to the reasonableness of the fee shall also be based on, both of the following:

(1) The total number of times the presently demanded fee has ever been charged and received by that expert.

(2) The frequency and regularity with which the presently demanded fee has been charged and received by that expert within the two-year period preceding the hearing on the motion.

(e) The court may also consider the ordinary and customary fees charged by similar experts for similar services within the relevant community and any other factors the court deems necessary or appropriate to make its determination.

(f) Upon a determination that the fee demanded by that expert is unreasonable, and based upon the evidence and factors considered, the court shall set the fee of the expert providing testimony.

(g) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to set the expert witness fee, unless it finds that the one subject to the

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

3
4 Article 4. Motion To Augment or Amend Expert Witness List
5 or Declaration
6

7 2034.610. (a) On motion of any party who has engaged in a
8 timely exchange of expert witness information, the court may
9 grant leave to do either or both of the following:

10 (1) Augment that party's expert witness list and declaration by
11 adding the name and address of any expert witness whom that
12 party has subsequently retained.

13 (2) Amend that party's expert witness declaration with respect
14 to the general substance of the testimony that an expert previously
15 designated is expected to give.

16 (b) A motion under subdivision (a) shall be made at a sufficient
17 time in advance of the time limit for the completion of discovery
18 under Chapter 8 (commencing with Section 2024.010) to permit
19 the deposition of any expert to whom the motion relates to be taken
20 within that time limit. Under exceptional circumstances, the court
21 may permit the motion to be made at a later time.

22 (c) The motion shall be accompanied by a meet and confer
23 declaration under Section 2016.040.

24 2034.620. The court shall grant leave to augment or amend an
25 expert witness list or declaration only if all of the following
26 conditions are satisfied:

27 (a) The court has taken into account the extent to which the
28 opposing party has relied on the list of expert witnesses.

29 (b) The court has determined that any party opposing the
30 motion will not be prejudiced in maintaining that party's action or
31 defense on the merits.

32 (c) The court has determined either of the following:

33 (1) The moving party would not in the exercise of reasonable
34 diligence have determined to call that expert witness or have
35 decided to offer the different or additional testimony of that expert
36 witness.

37 (2) The moving party failed to determine to call that expert
38 witness, or to offer the different or additional testimony of that
39 expert witness as a result of mistake, inadvertence, surprise, or

1 excusable neglect, and the moving party has done both of the
2 following:

3 (A) Sought leave to augment or amend promptly after deciding
4 to call the expert witness or to offer the different or additional
5 testimony.

6 (B) Promptly thereafter served a copy of the proposed expert
7 witness information concerning the expert or the testimony
8 described in Section 2034.260 on all other parties who have
9 appeared in the action.

10 (d) Leave to augment or amend is conditioned on the moving
11 party making the expert available immediately for a deposition
12 under Article 3 (commencing with Section 2034.410), and on any
13 other terms as may be just, including, but not limited to, leave to
14 any party opposing the motion to designate additional expert
15 witnesses or to elicit additional opinions from those previously
16 designated, a continuance of the trial for a reasonable period of
17 time, and the awarding of costs and litigation expenses to any party
18 opposing the motion.

19 2034.630. The court shall impose a monetary sanction under
20 Chapter 7 (commencing with Section 2023.010) against any party,
21 person, or attorney who unsuccessfully makes or opposes a motion
22 to augment or amend expert witness information, unless it finds
23 that the one subject to the sanction acted with substantial
24 justification or that other circumstances make the imposition of the
25 sanction unjust.

26
27 Article 5. Motion To Submit Tardy Expert Witness
28 Information
29

30 2034.710. (a) On motion of any party who has failed to
31 submit expert witness information on the date specified in a
32 demand for that exchange, the court may grant leave to submit that
33 information on a later date.

34 (b) A motion under subdivision (a) shall be made a sufficient
35 time in advance of the time limit for the completion of discovery
36 under Chapter 8 (commencing with Section 2024.010) to permit
37 the deposition of any expert to whom the motion relates to be taken
38 within that time limit. Under exceptional circumstances, the court
39 may permit the motion to be made at a later time.

1 (c) The motion shall be accompanied by a meet and confer
2 declaration under Section 2016.040.

3 2034.720. The court shall grant leave to submit tardy expert
4 witness information only if all of the following conditions are
5 satisfied:

6 (a) The court has taken into account the extent to which the
7 opposing party has relied on the absence of a list of expert
8 witnesses.

9 (b) The court has determined that any party opposing the
10 motion will not be prejudiced in maintaining that party's action or
11 defense on the merits.

12 (c) The court has determined that the moving party did all of the
13 following:

14 (1) Failed to submit the information as the result of mistake,
15 inadvertence, surprise, or excusable neglect.

16 (2) Sought leave to submit the information promptly after
17 learning of the mistake, inadvertence, surprise, or excusable
18 neglect.

19 (3) Promptly thereafter served a copy of the proposed expert
20 witness information described in Section 2034.260 on all other
21 parties who have appeared in the action.

22 (d) The order is conditioned on the moving party making the
23 expert available immediately for a deposition under Article 3
24 (commencing with Section 2034.410), and on any other terms as
25 may be just, including, but not limited to, leave to any party
26 opposing the motion to designate additional expert witnesses or to
27 elicit additional opinions from those previously designated, a
28 continuance of the trial for a reasonable period of time, and the
29 awarding of costs and litigation expenses to any party opposing the
30 motion.

31 2034.730. The court shall impose a monetary sanction under
32 Chapter 7 (commencing with Section 2023.010) against any party,
33 person, or attorney who unsuccessfully makes or opposes a motion
34 to submit tardy expert witness information, unless it finds that the
35 one subject to the sanction acted with substantial justification or
36 that other circumstances make the imposition of the sanction
37 unjust.

38

1 CHAPTER 19. PERPETUATION OF TESTIMONY OR PRESERVATION
2 OF EVIDENCE BEFORE FILING ACTION
3

4 2035.010. (a) One who expects to be a party to any action that
5 may be cognizable in any court of the State of California, whether
6 as a plaintiff, or as a defendant, or in any other capacity, may obtain
7 discovery within the scope delimited by Chapters 2 (commencing
8 with Section 2017.010) and 3 (commencing with Section
9 2017.710), and subject to the restrictions set forth in Chapter 5
10 (commencing with Section 2019.010), for the purpose of
11 perpetuating that party's own testimony or that of another natural
12 person or organization, or of preserving evidence for use in the
13 event an action is subsequently filed.

14 (b) One shall not employ the procedures of this chapter for the
15 purpose either of ascertaining the possible existence of a cause of
16 action or a defense to it, or of identifying those who might be made
17 parties to an action not yet filed.

18 2035.020. The methods available for discovery conducted for
19 the purposes set forth in Section 2035.010 are all of the following:

20 (a) Oral and written depositions.

21 (b) Inspections of documents, things, and places.

22 (c) Physical and mental examinations.

23 2035.030. (a) One who desires to perpetuate testimony or
24 preserve evidence for the purposes set forth in Section 2035.010
25 shall file a verified petition in the superior court of the county of
26 the residence of at least one expected adverse party, or, if no
27 expected adverse party is a resident of the State of California, in
28 the superior court of a county where the action or proceeding may
29 be filed.

30 (b) The petition shall be titled in the name of the one who
31 desires the perpetuation of testimony or the preservation of
32 evidence. The petition shall set forth all of the following:

33 (1) The expectation that the petitioner will be a party to an
34 action cognizable in a court of the State of California.

35 (2) The present inability of the petitioner either to bring that
36 action or to cause it to be brought.

37 (3) The subject matter of the expected action and the
38 petitioner's involvement.

39 (4) The particular discovery methods described in Section
40 2035.020 that the petitioner desires to employ.

1 (5) The facts that the petitioner desires to establish by the
2 proposed discovery.

3 (6) The reasons for desiring to perpetuate or preserve these
4 facts before an action has been filed.

5 (7) The name or a description of those whom the petitioner
6 expects to be adverse parties so far as known.

7 (8) The name and address of those from whom the discovery
8 is to be sought.

9 (9) The substance of the information expected to be elicited
10 from each of those from whom discovery is being sought.

11 (c) The petition shall request the court to enter an order
12 authorizing the petitioner to engage in discovery by the described
13 methods for the purpose of perpetuating the described testimony
14 or preserving the described evidence.

15 2035.040. (a) The petitioner shall cause service of a notice of
16 the petition under Section 2035.030 to be made on each natural
17 person or organization named in the petition as an expected
18 adverse party. This service shall be made in the same manner
19 provided for the service of a summons.

20 (b) The service of the notice shall be accompanied by a copy of
21 the petition. The notice shall state that the petitioner will apply to
22 the court at a time and place specified in the notice for the order
23 requested in the petition.

24 (c) This service shall be effected at least 20 days prior to the
25 date specified in the notice for the hearing on the petition.

26 (d) If after the exercise of due diligence, the petitioner is unable
27 to cause service to be made on any expected adverse party named
28 in the petition, the court in which the petition is filed shall make
29 an order for service by publication.

30 (e) If any expected adverse party served by publication does not
31 appear at the hearing, the court shall appoint an attorney to
32 represent that party for all purposes, including the
33 cross-examination of any person whose testimony is taken by
34 deposition. The court shall order that the petitioner pay the
35 reasonable fees and expenses of any attorney so appointed.

36 2035.050. (a) If the court determines that all or part of the
37 discovery requested under this chapter may prevent a failure or
38 delay of justice, it shall make an order authorizing that discovery.

39 (b) The order shall identify any witness whose deposition may
40 be taken, and any documents, things, or places that may be

1 inspected, and any person whose physical or mental condition may
2 be examined.

3 (c) Any authorized depositions, inspections, and physical or
4 mental examinations shall then be conducted in accordance with
5 the provisions of this title relating to those methods of discovery
6 in actions that have been filed.

7 2035.060. If a deposition to perpetuate testimony has been
8 taken either under the provisions of this chapter, or under
9 comparable provisions of the laws of another state, or the federal
10 courts, or a foreign nation, that deposition may be used, in any
11 action involving the same subject matter that is brought in a court
12 of the State of California, in accordance with Section 2025.620
13 against any party, or the successor in interest of any party, named
14 in the petition as an expected adverse party.

15
16 CHAPTER 20. PERPETUATION OF TESTIMONY OR PRESERVATION
17 OF INFORMATION PENDING APPEAL
18

19 2036.010. If an appeal has been taken from a judgment
20 entered by any court of the State of California, or if the time for
21 taking an appeal has not expired, a party may obtain discovery
22 within the scope delimited by Chapters 2 (commencing with
23 Section 2017.010) and 3 (commencing with Section 2017.710),
24 and subject to the restrictions set forth in Chapter 5 (commencing
25 with Section 2019.010), for the purpose of perpetuating testimony
26 or preserving information for use in the event of further
27 proceedings in that court.

28 2036.020. The methods available for discovery for the
29 purpose set forth in Section 2036.010 are all of the following:

30 (a) Oral and written depositions.

31 (b) Inspections of documents, things, and places.

32 (c) Physical and mental examinations.

33 2036.030. (a) A party who desires to obtain discovery
34 pending appeal shall obtain leave of the court that entered the
35 judgment. This motion shall be made on the same notice to and
36 service of parties as is required for discovery sought in an action
37 pending in that court.

38 (b) The motion for leave to conduct discovery pending appeal
39 shall set forth all of the following:

1 (1) The names and addresses of the natural persons or
2 organizations from whom the discovery is being sought.

3 (2) The particular discovery methods described in Section
4 2036.020 for which authorization is being sought.

5 (3) The reasons for perpetuating testimony or preserving
6 evidence.

7 2036.040. (a) If the court determines that all or part of the
8 discovery requested under this chapter may prevent a failure or
9 delay of justice in the event of further proceedings in the action in
10 that court, it shall make an order authorizing that discovery.

11 (b) The order shall identify any witness whose deposition may
12 be taken, and any documents, things, or places that may be
13 inspected, and any person whose physical or mental condition may
14 be examined.

15 (c) Any authorized depositions, inspections, and physical and
16 mental examinations shall then be conducted in accordance with
17 the provisions of this title relating to these methods of discovery
18 in a pending action.

19 2036.050. If a deposition to perpetuate testimony has been
20 taken under the provisions of this chapter, it may be used in any
21 later proceeding in accordance with Section 2025.620.

22 *SEC. 23.5. Section 2016.060 is added to the Code of Civil*
23 *Procedure, to read:*

24 *2016.060. When the last day to perform or complete any act*
25 *provided for in this title falls on a Saturday, Sunday, or holiday as*
26 *specified in Section 10, the time limit is extended until the next*
27 *court day closer to the trial date.*

28 *SEC. 24. Section 2093 of the Code of Civil Procedure is*
29 *amended to read:*

30 2093. (a) Every court, every judge, or clerk of any court,
31 every justice, and every notary public, and every officer or person
32 authorized to take testimony in any action or proceeding, or to
33 decide upon evidence, has the power to administer oaths or
34 affirmations.

35 (b) (1) Every shorthand reporter certified pursuant to Article
36 3 (commencing with Section 8020) of Chapter 13 of Division 3 of
37 the Business and Professions Code has the power to administer
38 oaths or affirmations and may perform the duties of the deposition
39 officer pursuant to Chapter 9 (commencing with Section
40 2025.010) of Title 4. The certified shorthand reporter shall be

1 entitled to receive fees for services rendered during a deposition,
2 including fees for deposition services, as specified in subdivision
3 (c) of Section 8211 of the Government Code.

4 (2) This subdivision shall also apply to depositions taken by
5 telephone or other remote electronic means as specified in Chapter
6 2 (commencing with Section 2017.010), Chapter 3 (commencing
7 with Section 2017.710), and Chapter 9 (commencing with Section
8 2025.010) of Title 4.

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

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

23 SEC. 25. Section 45312 of the Education Code is amended to
24 read:

25 45312. The commission may authorize a hearing officer or
26 other representative to conduct any hearing or investigation which
27 the commission itself is authorized by this article to conduct. Any
28 such authorized person conducting such hearing or investigation
29 may administer oaths, subpoena and require the attendance of
30 witnesses and the production of books or papers, and cause the
31 depositions of witnesses to be taken in the manner prescribed by
32 law for like depositions in civil cases in the superior court of this
33 state under Title 4 (commencing with Section 2016.010) of Part 4
34 of the Code of Civil Procedure. The commission may instruct such
35 authorized representative to present findings or recommendations.
36 The commission may accept, reject or amend any of the findings
37 or recommendations of the said authorized representative. Any
38 rejection or amendment of findings or recommendations shall be
39 based either on a review of the transcript of the hearing or

1 investigation or upon the results of such supplementary hearing or
2 investigation as the commission may order.

3 The commission may employ by contract or as professional
4 experts or otherwise any such hearing officers or other
5 representatives and may adopt and amend such rules and
6 procedures as may be necessary to effectuate this section.

7 SEC. 26. Section 87675 of the Education Code is amended to
8 read:

9 87675. The arbitrator shall conduct proceedings in
10 accordance with Chapter 5 (commencing with Section 11500) of
11 Part 1 of Division 3 of Title 2 of the Government Code, except that
12 the right of discovery of the parties shall not be limited to those
13 matters set forth in Section 11507.6 of the Government Code but
14 shall include the rights and duties of any party in a civil action
15 brought in a superior court under Title 4 (commencing with
16 Section 2016.010) of Part 4 of the Code of Civil Procedure. In all
17 cases, discovery shall be completed prior to one week before the
18 date set for hearing. The arbitrator shall determine whether there
19 is cause to dismiss or penalize the employee. If the arbitrator finds
20 cause, the arbitrator shall determine whether the employee shall be
21 dismissed, the precise penalty to be imposed, and whether the
22 decision should be imposed immediately or postponed pursuant to
23 Section 87672.

24 No witness shall be permitted to testify at the hearing except
25 upon oath or affirmation. No testimony shall be given or evidence
26 introduced relating to matters that occurred more than four years
27 prior to the date of the filing of the notice. Evidence of records
28 regularly kept by the governing board concerning the employee
29 may be introduced, but no decision relating to the dismissal or
30 suspension of any employee shall be made based on charges or
31 evidence of any nature relating to matters occurring more than four
32 years prior to the filing of the notice.

33 SEC. 27. Section 87679 of the Education Code is amended to
34 read:

35 87679. The administrative law judge shall conduct
36 proceedings in accordance with Chapter 5 (commencing with
37 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
38 Code, except that the right of discovery of the parties shall not be
39 limited to those matters set forth in Section 11507.6 of the
40 Government Code but shall include the rights and duties of any

1 party in a civil action brought in a superior court under Title 4
2 (commencing with Section 2016.010) of Part 4 of the Code of
3 Civil Procedure. In all cases, discovery shall be completed prior
4 to one week before the date set for hearing. The written notice
5 delivered to the employee pursuant to Section 87672 shall be
6 deemed an accusation. The written objection of the employee
7 delivered pursuant to Section 87673 shall be deemed the notice of
8 defense.

9 SEC. 28. Section 88131 of the Education Code is amended to
10 read:

11 88131. The commission may authorize a hearing officer or
12 other representative to conduct any hearing or investigation which
13 the commission itself is authorized by this article to conduct. Any
14 such authorized person conducting such hearing or investigation
15 may administer oaths, subpoena and require the attendance of
16 witnesses and the production of books or papers, and cause the
17 depositions of witnesses to be taken in the manner prescribed by
18 law for like depositions in civil cases in the superior court of this
19 state under Title 4 (commencing with Section 2016.010) of Part 4
20 of the Code of Civil Procedure. The commission may instruct such
21 authorized representative to present findings or recommendations.
22 The commission may accept, reject or amend any of the findings
23 or recommendations of the said authorized representative. Any
24 rejection or amendment of findings or recommendations shall be
25 based either on a review of the transcript of the hearing or
26 investigation or upon the results of such supplementary hearing or
27 investigation as the commission may order.

28 The commission may employ by contract or as professional
29 experts or otherwise any such hearing officers or other
30 representatives and may adopt and amend such rules and
31 procedures as may be necessary to effectuate this section.

32 SEC. 29. Section 915 of the Evidence Code is amended to
33 read:

34 915. (a) Subject to subdivision (b), the presiding officer may
35 not require disclosure of information claimed to be privileged
36 under this division or attorney work product under subdivision (a)
37 of Section 2018.030 of the Code of Civil Procedure in order to rule
38 on the claim of privilege; provided, however, that in any hearing
39 conducted pursuant to subdivision (c) of Section 1524 of the Penal
40 Code in which a claim of privilege is made and the court

1 determines that there is no other feasible means to rule on the
2 validity of the claim other than to require disclosure, the court shall
3 proceed in accordance with subdivision (b).

4 (b) When a court is ruling on a claim of privilege under Article
5 9 (commencing with Section 1040) of Chapter 4 (official
6 information and identity of informer) or under Section 1060 (trade
7 secret) or under subdivision (b) of Section 2018.030 of the Code
8 of Civil Procedure (attorney work product) and is unable to do so
9 without requiring disclosure of the information claimed to be
10 privileged, the court may require the person from whom disclosure
11 is sought or the person authorized to claim the privilege, or both,
12 to disclose the information in chambers out of the presence and
13 hearing of all persons except the person authorized to claim the
14 privilege and any other persons as the person authorized to claim
15 the privilege is willing to have present. If the judge determines that
16 the information is privileged, neither the judge nor any other
17 person may ever disclose, without the consent of a person
18 authorized to permit disclosure, what was disclosed in the course
19 of the proceedings in chambers.

20 SEC. 30. Section 1156 of the Evidence Code is amended to
21 read:

22 1156. (a) In-hospital medical or medical-dental staff
23 committees of a licensed hospital may engage in research and
24 medical or dental study for the purpose of reducing morbidity or
25 mortality, and may make findings and recommendations relating
26 to such purpose. Except as provided in subdivision (b), the written
27 records of interviews, reports, statements, or memoranda of such
28 in-hospital medical or medical-dental staff committees relating to
29 such medical or dental studies are subject to Title 4 (commencing
30 with Section 2016.010) of Part 4 of the Code of Civil Procedure
31 (relating to discovery proceedings) but, subject to subdivisions (c)
32 and (d), shall not be admitted as evidence in any action or before
33 any administrative body, agency, or person.

34 (b) The disclosure, with or without the consent of the patient,
35 of information concerning him to such in-hospital medical or
36 medical-dental staff committee does not make unprivileged any
37 information that would otherwise be privileged under Section 994
38 or 1014; but, notwithstanding Sections 994 and 1014, such
39 information is subject to discovery under subdivision (a) except

1 that the identity of any patient may not be discovered under
2 subdivision (a) unless the patient consents to such disclosure.

3 (c) This section does not affect the admissibility in evidence of
4 the original medical or dental records of any patient.

5 (d) This section does not exclude evidence which is relevant
6 evidence in a criminal action.

7 SEC. 31. Section 1156.1 of the Evidence Code is amended to
8 read:

9 1156.1. (a) A committee established in compliance with
10 Sections 4070 and 5624 of the Welfare and Institutions Code may
11 engage in research and medical or psychiatric study for the
12 purpose of reducing morbidity or mortality, and may make
13 findings and recommendations to the county and state relating to
14 such purpose. Except as provided in subdivision (b), the written
15 records of interviews, reports, statements, or memoranda of such
16 committees relating to such medical or psychiatric studies are
17 subject to Title 4 (commencing with Section 2016.010) of Part 4
18 of the Code of Civil Procedure but, subject to subdivisions (c) and
19 (d), shall not be admitted as evidence in any action or before any
20 administrative body, agency, or person.

21 (b) The disclosure, with or without the consent of the patient,
22 of information concerning him or her to such committee does not
23 make unprivileged any information that would otherwise be
24 privileged under Section 994 or 1014. However, notwithstanding
25 Sections 994 and 1014, such information is subject to discovery
26 under subdivision (a) except that the identity of any patient may
27 not be discovered under subdivision (a) unless the patient consents
28 to such disclosure.

29 (c) This section does not affect the admissibility in evidence of
30 the original medical or psychiatric records of any patient.

31 (d) This section does not exclude evidence which is relevant
32 evidence in a criminal action.

33 SEC. 32. Section 1560 of the Evidence Code is amended to
34 read:

35 1560. (a) As used in this article:

36 (1) "Business" includes every kind of business described in
37 Section 1270.

38 (2) "Record" includes every kind of record maintained by a
39 business.

(b) Except as provided in Section 1564, when a subpoena duces tecum is served upon the custodian of records or other qualified witness of a business in an action in which the business is neither a party nor the place where any cause of action is alleged to have arisen, and the subpoena requires the production of all or any part of the records of the business, it is sufficient compliance therewith if the custodian or other qualified witness, within five days after the receipt of the subpoena in any criminal action or within the time agreed upon by the party who served the subpoena and the custodian or other qualified witness, or within 15 days after the receipt of the subpoena in any civil action or within the time agreed upon by the party who served the subpoena and the custodian or other qualified witness, delivers by mail or otherwise a true, legible, and durable copy of all the records described in the subpoena to the clerk of the court or to another person described in subdivision (d) of Section 2026.010 of the Code of Civil Procedure, together with the affidavit described in Section 1561.

(c) The copy of the records shall be separately enclosed in an inner envelope or wrapper, sealed, with the title and number of the action, name of witness, and date of subpoena clearly inscribed thereon; the sealed envelope or wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and directed as follows:

(1) If the subpoena directs attendance in court, to the clerk of the court.

(2) If the subpoena directs attendance at a deposition, to the officer before whom the deposition is to be taken, at the place designated in the subpoena for the taking of the deposition or at the officer's place of business.

(3) In other cases, to the officer, body, or tribunal conducting the hearing, at a like address.

(d) Unless the parties to the proceeding otherwise agree, or unless the sealed envelope or wrapper is returned to a witness who is to appear personally, the copy of the records shall remain sealed and shall be opened only at the time of trial, deposition, or other hearing, upon the direction of the judge, officer, body, or tribunal conducting the proceeding, in the presence of all parties who have appeared in person or by counsel at the trial, deposition, or hearing. Records which are original documents and which are not introduced in evidence or required as part of the record shall be

1 returned to the person or entity from whom received. Records
2 which are copies may be destroyed.

3 (e) As an alternative to the procedures described in
4 subdivisions (b), (c), and (d), the subpoenaing party may direct the
5 witness to make the records available for inspection or copying by
6 the party's attorney, the attorney's representative, or deposition
7 officer as described in Section 2020.420 of the Code of Civil
8 Procedure, at the witness' business address under reasonable
9 conditions during normal business hours. Normal business hours,
10 as used in this subdivision, means those hours that the business of
11 the witness is normally open for business to the public. When
12 provided with at least five business days' advance notice by the
13 party's attorney, attorney's representative, or deposition officer,
14 the witness shall designate a time period of not less than six
15 continuous hours on a date certain for copying of records subject
16 to the subpoena by the party's attorney, attorney's representative
17 or deposition officer. It shall be the responsibility of the attorney's
18 representative to deliver any copy of the records as directed in the
19 subpoena. Disobedience to the deposition subpoena issued
20 pursuant to this subdivision is punishable as provided in Section
21 2020.240 of the Code of Civil Procedure.

22 SEC. 33. Section 3110.5 of the Family Code is amended to
23 read:

24 3110.5. (a) No person shall be a court-connected or private
25 child custody evaluator under this chapter unless the person has
26 completed the domestic violence and child abuse training program
27 described in Section 1816 and has complied with Rules 1257.3 and
28 1257.7 of the California Rules of Court.

29 (b) (1) On or before January 1, 2002, the Judicial Council shall
30 formulate a statewide rule of court that establishes education,
31 experience, and training requirements for all child custody
32 evaluators appointed pursuant to this chapter, Section 730 of the
33 Evidence Code, or Chapter 15 (commencing with Section
34 2032.010) of Title 4 of Part 4 of the Code of Civil Procedure.

35 (A) The rule shall require a child custody evaluator to declare
36 under penalty of perjury that he or she meets all of the education,
37 experience, and training requirements specified in the rule and, if
38 applicable, possesses a license in good standing. The Judicial
39 Council shall establish forms to implement this section. The rule
40 shall permit court-connected evaluators to conduct evaluations if

1 they meet all of the qualifications established by the Judicial
2 Council. The education, experience, and training requirements to
3 be specified for court-connected evaluators shall include, but shall
4 not be limited to, knowledge of the psychological and
5 developmental needs of children and parent-child relationships.

6 (B) The rule shall require all evaluators to utilize comparable
7 interview, assessment, and testing procedures for all parties that
8 are consistent with generally accepted clinical, forensic, scientific,
9 diagnostic, or medical standards. The rule shall also require
10 evaluators to inform each adult party of the purpose, nature, and
11 method of the evaluation.

12 (C) The rule may allow courts to permit the parties to stipulate
13 to an evaluator of their choosing with the approval of the court
14 under the circumstances set forth in subdivision (d). The rule may
15 require courts to provide general information about how parties
16 can contact qualified child custody evaluators in their county.

17 (2) On or before January 1, 2004, the Judicial Council shall
18 include in the statewide rule of court created pursuant to this
19 section a requirement that all court-connected and private child
20 custody evaluators receive training in the nature of child sexual
21 abuse. The Judicial Council shall develop standards for this
22 training that shall include, but not be limited to, the following:

23 (A) Children's patterns of hiding and disclosing sexual abuse
24 occurring in a family setting.

25 (B) The effects of sexual abuse on children.

26 (C) The nature and extent of child sexual abuse.

27 (D) The social and family dynamics of child sexual abuse.

28 (E) Techniques for identifying and assisting families affected
29 by child sexual abuse.

30 (F) Legal rights, protections, and remedies available to victims
31 of child sexual abuse.

32 (c) In addition to the education, experience, and training
33 requirements established by the Judicial Council pursuant to
34 subdivision (b), on or after January 1, 2005, no person shall be a
35 child custody evaluator under this chapter, Section 730 of the
36 Evidence Code, or Chapter 15 (commencing with Section
37 2032.010) of Title 4 of Part 4 of the Code of Civil Procedure unless
38 the person meets one of the following criteria:

39 (1) He or she is licensed as a physician under Chapter 5
40 (commencing with Section 2000) of Division 2 of the Business and

1 Professions Code and either is a board certified psychiatrist or has
2 completed a residency in psychiatry.

3 (2) He or she is licensed as a psychologist under Chapter 6.6
4 (commencing with Section 2900) of Division 2 of the Business and
5 Professions Code.

6 (3) He or she is licensed as a marriage and family therapist
7 under Chapter 13 (commencing with Section 4980) of Division 2
8 of the Business and Professions Code.

9 (4) He or she is licensed as a clinical social worker under
10 Article 4 (commencing with Section 4996) of Chapter 14 of
11 Division 2 of the Business and Professions Code.

12 (5) He or she is a court-connected evaluator who has been
13 certified by the court as meeting all of the qualifications for
14 court-connected evaluators as specified by the Judicial Council
15 pursuant to subdivision (b).

16 (d) Subdivision (c) shall not apply in any case where the court
17 determines that there are no evaluators who meet the criteria of
18 subdivision (c) who are willing and available, within a reasonable
19 period of time, to perform child custody evaluations. In those
20 cases, the parties may stipulate to an individual who does not meet
21 the criteria of subdivision (c), subject to approval by the court.

22 (e) A child custody evaluator who is licensed by the Medical
23 Board of California, the Board of Psychology, or the Board of
24 Behavioral Sciences shall be subject to disciplinary action by that
25 board for unprofessional conduct, as defined in the licensing law
26 applicable to that licensee.

27 (f) On or after January 1, 2005, a court-connected or private
28 child custody evaluator shall not evaluate, investigate, or mediate
29 an issue of child custody in a proceeding pursuant to this division
30 unless that person has completed child sexual abuse training as
31 required by this section.

32 SEC. 34. Section 3666 of the Family Code is amended to read:

33 3666. This article may be enforced in the manner specified in
34 Sections 1991, 1991.1, 1991.2, 1992, and 1993 of the Code of
35 Civil Procedure and in the Civil Discovery Act (Title 4
36 (commencing with Section 2016.010) of Part 4 of the Code of
37 Civil Procedure), and any other statutes applicable to the
38 enforcement of procedures for discovery.

39 SEC. 35. Section 4331 of the Family Code is amended to read:

1 4331. (a) In a proceeding for dissolution of marriage or for
2 legal separation of the parties, the court may order a party to submit
3 to an examination by a vocational training counselor. The
4 examination shall include an assessment of the party's ability to
5 obtain employment based upon the party's age, health, education,
6 marketable skills, employment history, and the current availability
7 of employment opportunities. The focus of the examination shall
8 be on an assessment of the party's ability to obtain employment
9 that would allow the party to maintain herself or himself at the
10 marital standard of living.

11 (b) The order may be made only on motion, for good cause, and
12 on notice to the party to be examined and to all parties. The order
13 shall specify the time, place, manner, conditions, scope of the
14 examination, and the person or persons by whom it is to be made.

15 (c) A party who does not comply with an order under this
16 section is subject to the same consequences provided for failure to
17 comply with an examination ordered pursuant to Chapter 15
18 (commencing with Section 2032.010) of Title 4 of Part 4 of the
19 Code of Civil Procedure.

20 (d) "Vocational training counselor" for the purpose of this
21 section means an individual with sufficient knowledge, skill,
22 experience, training, or education in interviewing, administering,
23 and interpreting tests for analysis of marketable skills, formulating
24 career goals, planning courses of training and study, and assessing
25 the job market, to qualify as an expert in vocational training under
26 Section 720 of the Evidence Code.

27 (e) A vocational training counselor shall have at least the
28 following qualifications:

29 (1) A master's degree in the behavioral sciences.

30 (2) Be qualified to administer and interpret inventories for
31 assessing career potential.

32 (3) Demonstrated ability in interviewing clients and assessing
33 marketable skills with understanding of age constraints, physical
34 and mental health, previous education and experience, and time
35 and geographic mobility constraints.

36 (4) Knowledge of current employment conditions, job market,
37 and wages in the indicated geographic area.

38 (5) Knowledge of education and training programs in the area
39 with costs and time plans for these programs.

1 (f) The court may order the supporting spouse to pay, in
2 addition to spousal support, the necessary expenses and costs of the
3 counseling, retraining, or education.

4 SEC. 36. Section 309 of the Fish and Game Code is amended
5 to read:

6 309. (a) The commission or any person appointed by it to
7 conduct a hearing may, in any investigation or hearing, cause the
8 deposition of witnesses, residing within or without the state, to be
9 taken in the manner prescribed by law for deposition in civil
10 actions in the superior courts of this state under Title 4
11 (commencing with Section 2016.010) of Part 4 of the Code of
12 Civil Procedure, and may compel the attendance of witnesses and
13 the production of documents and papers. The commission shall
14 adopt regulations that afford procedural and substantive due
15 process to any person whose license or permit is subject to
16 revocation or suspension. Except upon conviction of a violation of
17 this code or a regulation adopted pursuant to this code relating to
18 the licensed or permitted activity and notwithstanding any other
19 provision of this code, the commission shall not revoke or suspend
20 any license or permit until the regulations required by this section
21 have been adopted and approved by the Office of Administrative
22 Law pursuant to Chapter 3.5 (commencing with Section 11340) of
23 Part 1 of Division 3 of Title 2 of the Government Code.

24 (b) Any deliberation conducted by the commission, or
25 conducted by any person appointed by the commission to conduct
26 hearings, is deemed to be a proceeding required to be conducted
27 pursuant to Chapter 5 (commencing with Section 11500) of Part
28 1 of Division 3 of Title 2 of the Government Code or similar
29 provision, within the meaning of paragraph (3) of subdivision (c)
30 of Section 11126 of the Government Code.

31 SEC. 37. Section 5934 of the Fish and Game Code is amended
32 to read:

33 5934. The commission or any party may, in any hearing, cause
34 the deposition of witnesses to be taken in the manner prescribed
35 by law for depositions in civil actions in the superior courts of this
36 state under Title 4 (commencing with Section 2016.010) of Part 4
37 of the Code of Civil Procedure.

38 SEC. 38. Section 6276.04 of the Government Code is
39 amended to read:

1 6276.04. Aeronautics Act, reports of investigations and
2 hearings, Section 21693, Public Utilities Code.
3 Agricultural producers marketing, access to records, Section
4 59616, Food and Agricultural Code.
5 Aiding disabled voters, Section 14282, Elections Code.
6 Air pollution data, confidentiality of trade secrets, Section
7 6254.7, Government Code, and Sections 42303.2 and 43206,
8 Health and Safety Code.
9 Air toxics emissions inventory plans, protection of trade secrets,
10 Section 44346, Health and Safety Code.
11 Alcohol and drug abuse records and records of communicable
12 diseases, confidentiality of, Section 123125, Health and Safety
13 Code.
14 Apiary registration information, confidentiality of, Section
15 29041, Food and Agricultural Code.
16 Arrest not resulting in conviction, disclosure or use of records,
17 Sections 432.7 and 432.8, Labor Code.
18 Arsonists, registered, confidentiality of certain information,
19 Section 457.1, Penal Code.
20 Artificial insemination, donor not natural father, confidentiality
21 of records, Section 7613, Family Code.
22 Assessor's records, confidentiality of information in, Section
23 408, Revenue and Taxation Code.
24 Assessor's records, confidentiality of information in, Section
25 451, Revenue and Taxation Code.
26 Assessor's records, display of documents relating to business
27 affairs or property of another, Section 408.2, Revenue and
28 Taxation Code.
29 Assigned risk plans, rejected applicants, confidentiality of
30 information, Section 11624, Insurance Code.
31 Attorney applicant, investigation by State Bar, confidentiality
32 of, Section 6060.2, Business and Professions Code.
33 Attorney-client confidential communication, Section 6068,
34 Business and Professions Code and Sections 952, 954, 956, 956.5,
35 957, 958, 959, 960, 961, and 962, Evidence Code.
36 Attorney, disciplinary proceedings, confidentiality prior to
37 formal proceedings, Section 6086.1, Business and Professions
38 Code.

1 Attorney, disciplinary proceeding, State Bar access to
2 nonpublic court records, Section 6090.6, Business and Professions
3 Code.

4 Attorney, investigation by State Bar, confidentiality of, Section
5 6168, Business and Professions Code.

6 Attorney, law corporation, investigation by State Bar,
7 confidentiality of, Section 6168, Business and Professions Code.

8 Attorney, State Bar survey information, confidentiality of,
9 Section 6033, Business and Professions Code.

10 Attorney work product confidentiality in administrative
11 adjudication, Section 11507.6, Government Code.

12 Attorney, work product, confidentiality of, Section 6202,
13 Business and Professions Code.

14 Attorney work product, discovery, Chapter 4 (commencing
15 with Section 2018.010), of Title 4, of Part 4 of the Code of Civil
16 Procedure.

17 Auditor General, access to records for audit purposes, Sections
18 10527 and 10527.1, Government Code.

19 Auditor General, disclosure of audit records, Section 10525,
20 Government Code.

21 Automobile Insurance Claims Depository, confidentiality of
22 information, Section 1876.3, Insurance Code.

23 Automobile insurance, investigation of fraudulent claims,
24 confidential information, Section 1872.8, Insurance Code.

25 Automotive repair facility, fact of certification or
26 decertification, Section 9889.47, Business and Professions Code.

27 Automotive repair facility, notice of intent to seek certification,
28 Section 9889.33, Business and Professions Code.

29 Avocado handler transaction records, confidentiality of,
30 Sections 44982 and 44984, Food and Agricultural Code.

31 SEC. 39. Section 11045 of the Government Code is amended
32 to read:

33 11045. (a) (1) Whenever a state agency requests the consent
34 of the Attorney General to employ outside counsel, as required by
35 Section 11040, the state agency shall within five business days of
36 the date the request is transmitted to the Attorney General provide
37 the designated representative of State Employees Bargaining Unit
38 2 with written notification of the request. The notice shall include
39 the items enumerated in subdivision (d).

(2) All state agencies, other than the office of the Attorney General, that are not required to obtain the consent required by subdivision (c) of Section 11040, shall provide written notice of any proposed contract for outside legal counsel to the designated representative of State Employees Bargaining Unit 2 five business days prior to execution of the contract by the state agency. The notice shall include the items required by subdivision (d). In the event of an emergency that requires the immediate employment of outside counsel, the state agency shall provide the written notice no later than five business days after the contract with outside counsel is signed.

(3) Whenever the Attorney General determines the need to employ outside legal counsel pursuant to subdivision (b) of Section 12520, the Attorney General shall give written notice to the designated representative of State Employees Bargaining Unit 2 within 10 days of that determination. The notice shall include the items enumerated in subdivision (d).

(b) The Attorney General shall provide the designated representative of State Employees Bargaining Unit 2 with a written report, at least monthly, of all consents granted to every state agency pursuant to Section 11040.

(c) Notwithstanding the above notice requirements, whenever any state agency submits a proposed contract for outside counsel to the Department of General Services pursuant to Section 10335 of the Public Contract Code, the agency shall provide a copy of the contract to the designated representative of State Employees Bargaining Unit 2.

(d) “Written notice” within the meaning of this section shall include, but not be limited to, all of the following:

(1) A copy of the complaint or other pleadings, if any, that gave rise to the litigation or matter for which a contract is being sought, or other identifying information.

(2) The justification for the contract, pursuant to subdivision (b) of Section 19130.

(3) The nature of the legal services to be performed.

(4) The estimated hourly wage to be paid under the contract.

(5) The estimated length of the contract.

(6) The identity of the person or entity that is entering into the contract with the state.

(e) “State agency,” as used in this section, means every state office, department, division, bureau, board, or commission, including the Board of Directors of the State Compensation Insurance Fund, but does not include the Regents of the University of California, the Trustees of the California State University, the Legislature, the courts, or any agency in the judicial branch of government.

(f) (1) The notice requirements of this section do not apply to contracts for expert witnesses or consultations in connection with a confidential investigation or to any confidential component of a pending or active legal action.

(2) The exemption authorized in paragraph (1) shall only apply as long as necessary to protect the confidentiality of the investigation or the confidential component of a pending or active legal action.

(3) Disclosures made pursuant to this section are deemed to be privileged communications for purposes of subdivision (c) of Section 912 of the Evidence Code, and shall not be construed to be a waiver of any privilege or exemption provided by law, including, but not limited to, the lawyer-client privilege, as described in Section 952 of the Evidence Code, or attorney work product, as described in Chapter 4 (commencing with Section 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure.

(g) If the provisions of this section are in conflict with the provisions of a memorandum of understanding or other written agreement reached pursuant to Section 3517 or 3517.5, the memorandum of understanding or agreement shall be controlling without further legislative action, except that if any provision of the memorandum of understanding or other agreement requires the expenditure of funds, the provisions may not become effective unless approved by the Legislature.

SEC. 40. Section 11187 of the Government Code is amended to read:

11187. (a) Except as provided in subdivision (c), if any witness refuses to answer any interrogatory or to attend or testify or produce or permit the inspection or copying of any papers or other items described in subdivision (e) of Section 11181 required by subpoena, the head of the department may petition the superior court in the county in which the hearing or investigation is pending or the county in which testimony is designated in the subpoena to

1 be given or documents or other items are designated in the
2 subpoena to be produced, for an order compelling the person to
3 answer the interrogatories or to attend and testify or produce and
4 permit the inspection and copying of the papers or other items
5 required by the subpoena before the officer named in the subpoena.

6 (b) The petition shall set forth all of the following:

7 (1) That due notice of the time and place for answering the
8 interrogatories or testifying or the attendance of the person or the
9 production of the papers or other items described in subdivision (e)
10 of Section 11181 was given.

11 (2) That the person was subpoenaed or required to answer
12 interrogatories in the manner prescribed in this article.

13 (3) That the person failed and refused to answer the
14 interrogatories or to attend or testify or produce or permit the
15 inspection or copying of the papers or other items required by
16 subpoena before the officer in the cause or proceeding named in
17 the subpoena, or has refused to answer questions propounded to
18 him or her in the course of the investigation or hearing.

19 (c) If the witness named in the subpoena does not reside or
20 conduct business in this state, the department head may seek to
21 compel the witness' testimony and production, inspection, and
22 copying of documents or other items described in subdivision (e)
23 of Section 11181 in the manner provided for the enforcement of
24 a deposition notice to a nonparty as described in Section 2026.010
25 or 2027.010 of the Code of Civil Procedure or in any other manner
26 authorized by any law.

27 (d) If any witness objects and based on that objection refuses
28 to answer any interrogatory or to attend or testify or produce or
29 permit the inspection or copying of any papers or other items
30 described in subdivision (e) of Section 11181 as required by a
31 subpoena, the witness shall state the objection and the validity of
32 the objection shall be determined exclusively in a proceeding
33 brought by the head of the department to compel compliance as
34 provided in this section.

35 SEC. 41. Section 11189 of the Government Code is amended
36 to read:

37 11189. In any matter pending before a department head, the
38 department head may cause the deposition of persons residing
39 within or without the state to be taken by causing a petition to be
40 filed in the Superior Court in the County of Sacramento reciting

1 the nature of the matter pending, the name and residence of the
2 person whose testimony is desired, and asking that an order be
3 made requiring the person to appear and testify before an officer
4 named in the petition for that purpose. Upon the filing of the
5 petition the court may make an order requiring the person to appear
6 and testify in the manner prescribed by law for like depositions in
7 civil actions in the superior courts of this state under Title 4
8 (commencing with Section 2016.010) of Part 4 of the Code of
9 Civil Procedure. In the same manner the superior courts may
10 compel the attendance of persons as witnesses, and the production
11 of papers, books, accounts, and documents, under Chapter 2
12 (commencing with Section 1985) of Title 3 of Part 4 of the Code
13 of Civil Procedure, and may punish for contempt.

14 SEC. 42. Section 11511 of the Government Code is amended
15 to read:

16 11511. On verified petition of any party, an administrative law
17 judge or, if an administrative law judge has not been appointed, an
18 agency may order that the testimony of any material witness
19 residing within or without the state be taken by deposition in the
20 manner prescribed by law for depositions in civil actions under
21 Title 4 (commencing with Section 2016.010) of Part 4 of the Code
22 of Civil Procedure. The petition shall set forth the nature of the
23 pending proceeding; the name and address of the witness whose
24 testimony is desired; a showing of the materiality of the testimony;
25 a showing that the witness will be unable or cannot be compelled
26 to attend; and shall request an order requiring the witness to appear
27 and testify before an officer named in the petition for that purpose.
28 The petitioner shall serve notice of hearing and a copy of the
29 petition on the other parties at least 10 days before the hearing.
30 Where the witness resides outside the state and where the
31 administrative law judge or agency has ordered the taking of the
32 testimony by deposition, the agency shall obtain an order of court
33 to that effect by filing a petition therefor in the superior court in
34 Sacramento County. The proceedings thereon shall be in
35 accordance with the provisions of Section 11189.

36 SEC. 43. Section 12972 of the Government Code is amended
37 to read:

38 12972. (a) The commission shall conduct all actions and
39 procedures in accordance with either of the following:



1 (1) Chapter 5 (commencing with Section 11500) of Part 1,
2 except as otherwise specified by this part.

3 (2) Regulations adopted by the commission.

4 (b) In addition to the discovery available to each party pursuant
5 to subdivision (a), the department and the respondent may each
6 cause a single deposition to be taken in the manner prescribed by
7 law for depositions in civil actions in the superior courts of this
8 state under Title 4 (commencing with Section 2016.010) of Part 4
9 of the Code of Civil Procedure.

10 SEC. 44. Section 18671 of the Government Code is amended
11 to read:

12 18671. Such hearings and investigations may be conducted by
13 the board, any member, or any authorized representative of the
14 board. Any authorized person conducting such hearing or
15 investigation may administer oaths, subpoena and require the
16 attendance of witnesses and the production of books or papers, and
17 cause the depositions of witnesses residing within or without the
18 state to be taken in the manner prescribed by law for like
19 depositions in civil cases in the superior court of this state under
20 Title 4 (commencing with Section 2016.010) of Part 4 of the Code
21 of Civil Procedure.

22 SEC. 45. Section 68092.5 of the Government Code is
23 amended to read:

24 68092.5. (a) A party requiring testimony before any court,
25 tribunal, or arbiter in any civil action or proceeding from any
26 expert witness, other than a party or employee of a party, who is
27 either, (1) an expert described in subdivision (b) of Section
28 2034.210 of the Code of Civil Procedure, (2) a treating physician
29 and surgeon or other treating health care practitioner who is to be
30 asked to express an opinion during the action or proceeding, or (3)
31 an architect, professional engineer, or licensed land surveyor who
32 was involved with the original project design or survey for which
33 he or she is asked to express an opinion within his or her expertise
34 and relevant to the action or proceeding, shall pay the reasonable
35 and customary hourly or daily fee for the actual time consumed in
36 the examination of that witness by any party attending the action
37 or proceeding. The hourly or daily fee shall not exceed the fee
38 charged the party who retained the expert except where the expert
39 donated his or her services to a charitable or other nonprofit
40 organization. A daily fee shall only be charged for a full day of

1 attendance at a deposition or where the expert was required by the
2 deposing party to be available for a full day and the expert
3 necessarily had to forego all business he or she would have
4 otherwise conducted that day but for the request that he or she be
5 available all day for the scheduled deposition.

6 The party requiring the attendance shall either accompany the
7 service of the subpoena or notice with a tender of the expert's fee
8 based on the anticipated length of time the expert is required to
9 remain at such place pursuant to the notice or subpoena or tender
10 that fee at the required time of appearance. The expert's fee shall
11 be delivered to the attorney for the party designating the expert. If
12 the appearance of the expert takes longer than anticipated, the
13 party serving the subpoena or notice shall pay the balance of the
14 expert's fee within five days of receipt of an itemized statement
15 from the expert. The party designating the expert is responsible for
16 any fee charged by the expert for preparing for the testimony and
17 for traveling to the place of the civil action or proceeding, as well
18 as for any travel expenses of the expert, unless otherwise
19 determined by the court.

20 (b) The service of a proper subpoena or notice accompanied by
21 the tender of the expert witness fee described in subdivision (a) is
22 effective to require the party employing or retaining the expert to
23 produce the expert for testimony. If the party serving the notice or
24 subpoena fails to tender the expert's fee under subdivision (a), the
25 expert shall not be required to appear at that time unless the parties
26 stipulate otherwise.

27 (c) If a party requiring the appearance by subpoena or notice of
28 another party's expert witness under this subdivision deems that
29 the hourly or daily fee of that expert for providing testimony is
30 unreasonable, that party may move for an order setting the
31 compensation of that expert. This motion shall be accompanied by
32 a declaration stating facts showing a reasonable and good faith
33 attempt at an informal resolution of each issue presented by the
34 motion. Notice of this motion shall also be given to the expert.

35 In any such attempt at an informal resolution, either the party or
36 the expert shall provide the other with (A) proof of the ordinary
37 and customary fee actually charged and received by that expert for
38 similar services provided outside the subject litigation, (B) the
39 total number of times the presently demanded fee has ever been
40 charged and received by that expert, and (C) the frequency and

regularity with which the presently demanded fee has been charged and received by that expert within the two-year period preceding the hearing on the motion. Provisions (B) and (C) shall apply to actions filed after January 1, 1994.

In addition to any other facts or evidence, the expert or the party designating the expert shall provide, and the court's determination as to the reasonableness of the fee shall be based upon, (1) proof of the ordinary and customary fee actually charged and received by that expert for similar services provided outside the subject litigation, (2) the total number of times the presently demanded fee has ever been charged and received by that expert, and (3) the frequency and regularity with which the presently demanded and any other fee has been charged and received by that expert within the two-year period preceding the hearing on the motion. The court may also consider (4) the ordinary and customary fees charged by similar experts for similar services within the relevant community, and (5) any other factors the court deems necessary or appropriate to make its determination.

Upon a determination that the fee demanded by that expert is unreasonable, and based upon the evidence and factors considered, the court shall set the fee of the expert providing testimony.

(d) In the event the proceeding at which the expert witness has been notified his or her attendance is required is continued or canceled in advance of the time for which it is scheduled, such witness shall be notified of the continuance or cancellation by the party requiring his or her attendance by the quickest and most reliable means of giving notice under the circumstances. In the event such party fails to give notice as required by this subdivision, then the expert witness shall be entitled to receive the compensation specified in subdivision (a) of this section, notwithstanding his or her failure to give any testimony.

(e) An express contract entered into between a person and the party requesting or requiring the person to testify, relating to compensation, shall be enforceable and shall prevail over the provisions of this section.

(f) The deposition of an expert witness is governed by Chapter 18 (commencing with Section 2034.010) of Title 4 of Part 4 of the Code of Civil Procedure.

SEC. 46. Section 68616 of the Government Code is amended to read:

1 68616. Delay reduction rules shall not require shorter time
2 periods than as follows:

3 (a) Service of the complaint within 60 days after filing.
4 Exceptions, for longer periods of time, (1) may be granted as
5 authorized by local rule and (2) shall be granted on a showing that
6 service could not reasonably be achieved within the time required
7 with the exercise of due diligence consistent with the amount in
8 controversy.

9 (b) Service of responsive pleadings within 30 days after service
10 of the complaint. The parties may stipulate to an additional 15
11 days. Exceptions, for longer periods of time, may be granted as
12 authorized by local rule.

13 (c) Time for service of notice or other paper under Sections
14 1005 and 1013 of the Code of Civil Procedure and time to plead
15 after service of summons under Section 412.20 of the Code of
16 Civil Procedure shall not be shortened except as provided in those
17 sections.

18 (d) Within 30 days of service of the responsive pleadings, the
19 parties may, by stipulation filed with the court, agree to a single
20 continuance not to exceed 30 days.

21 It is the intent of the Legislature that these stipulations not
22 detract from the efforts of the courts to comply with standards of
23 timely disposition. To this extent, the Judicial Council shall
24 develop statistics that distinguish between cases involving, and not
25 involving, these stipulations.

26 (e) No status conference, or similar event, other than a
27 challenge to the jurisdiction of the court, may be required to be
28 conducted sooner than 30 days after service of the first responsive
29 pleadings, or no sooner than 30 days after expiration of a stipulated
30 continuance, if any, pursuant to subdivision (d).

31 (f) Title 4 (commencing with Section 2016.010) of Part 4 of
32 the Code of Civil Procedure shall govern discovery, except in
33 arbitration proceedings.

34 (g) No case may be referred to arbitration prior to 210 days
35 after the filing of the complaint, exclusive of the stipulated period
36 provided for in subdivision (d). No rule adopted pursuant to this
37 article may contravene Sections 638 and 639 of the Code of Civil
38 Procedure.

1 (h) Unnamed (DOE) defendants shall not be dismissed prior to
2 the conclusion of the introduction of evidence at trial, except upon
3 stipulation or motion of the parties.

4 (i) Notwithstanding Section 170.6 of the Code of Civil
5 Procedure, in direct calendar courts, challenges pursuant to that
6 section shall be exercised within 15 days of the party's first
7 appearance. Master calendar courts shall be governed solely by
8 Section 170.6 of the Code of Civil Procedure.

9 (j) This section applies to all cases subject to this article which
10 are filed on or after January 1, 1991.

11 (k) This section shall become operative on January 1, 2004.

12 SEC. 47. Section 5710 of the Labor Code is amended to read:

13 5710. (a) The appeals board, a workers' compensation judge,
14 or any party to the action or proceeding, may, in any investigation
15 or hearing before the appeals board, cause the deposition of
16 witnesses residing within or without the state to be taken in the
17 manner prescribed by law for like depositions in civil actions in the
18 superior courts of this state under Title 4 (commencing with
19 Section 2016.010) of Part 4 of the Code of Civil Procedure. To that
20 end the attendance of witnesses and the production of records may
21 be required. Depositions may be taken outside the state before any
22 officer authorized to administer oaths. The appeals board or a
23 workers' compensation judge in any proceeding before the
24 appeals board may cause evidence to be taken in other jurisdictions
25 before the agency authorized to hear workers' compensation
26 matters in those other jurisdictions.

27 (b) Where the employer or insurance carrier requests a
28 deposition to be taken of an injured employee, or any person
29 claiming benefits as a dependent of an injured employee, the
30 deponent is entitled to receive in addition to all other benefits:

31 (1) All reasonable expenses of transportation, meals, and
32 lodging incident to the deposition.

33 (2) Reimbursement for any loss of wages incurred during
34 attendance at the deposition.

35 (3) A copy of the transcript of the deposition, without cost.

36 (4) A reasonable allowance for attorney's fees for the
37 deponent, if represented by an attorney licensed by the State Bar
38 of this state. The fee shall be discretionary with, and, if allowed,
39 shall be set by, the appeals board, but shall be paid by the employer
40 or his or her insurer.

1 (5) A reasonable allowance for interpreter's fees for the
2 deponent, if interpretation services are needed and provided by a
3 language interpreter certified or deemed certified pursuant to
4 Article 8 (commencing with Section 11435.05) of Chapter 4.5 of
5 Part 1 of Division 3 of Title 2 of, or Section 68566 of, the
6 Government Code. The fee shall be in accordance with the fee
7 schedule set by the administrative director and paid by the
8 employer or his or her insurer. Payment for interpreter's services
9 shall be allowed for deposition of a non-English-speaking injured
10 worker, and for any other deposition-related events as permitted
11 by the administrative director.

12 SEC. 48. Section 6613 of the Labor Code is amended to read:

13 6613. The appeals board, a hearing officer, or any party to the
14 action or proceeding, may, in any investigation or hearing before
15 the appeals board, cause the deposition of witnesses residing
16 within or without the state to be taken in the manner prescribed by
17 law for like depositions in civil actions in the superior courts of this
18 state under Title 4 (commencing with Section 2016.010) of Part 4
19 of the Code of Civil Procedure. To that end the attendance of
20 witnesses and the production of records may be required.
21 Depositions may be taken outside the state before any officer
22 authorized to administer oaths. The appeals board or a hearing
23 officer in any proceeding before the appeals board may cause
24 evidence to be taken in other jurisdictions before the agency
25 authorized to hear similar matters in such other jurisdictions.

26 SEC. 49. Section 186.11 of the Penal Code is amended to
27 read:

28 186.11. (a) (1) Any person who commits two or more
29 related felonies, a material element of which is fraud or
30 embezzlement, which involve a pattern of related felony conduct,
31 and the pattern of related felony conduct involves the taking of
32 more than one hundred thousand dollars (\$100,000), shall be
33 punished, upon conviction of two or more felonies in a single
34 criminal proceeding, in addition and consecutive to the
35 punishment prescribed for the felony offenses of which he or she
36 has been convicted, by an additional term of imprisonment in the
37 state prison as specified in paragraph (2) or (3). This enhancement
38 shall be known as the aggravated white collar crime enhancement.
39 The aggravated white collar crime enhancement shall only be
40 imposed once in a single criminal proceeding. For purposes of this



section, “pattern of related felony conduct” means engaging in at least two felonies that have the same or similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics, and that are not isolated events. For purposes of this section, “two or more related felonies” means felonies committed against two or more separate victims, or against the same victim on two or more separate occasions.

(2) If the pattern of related felony conduct involves the taking of more than five hundred thousand dollars (\$500,000), the additional term of punishment shall be two, three, or five years in the state prison.

(3) If the pattern of related felony conduct involves the taking of more than one hundred thousand dollars (\$100,000), but not more than five hundred thousand dollars (\$500,000), the additional term of punishment shall be the term specified in paragraph (1) or (2) of subdivision (a) of Section 12022.6.

(b) (1) The additional prison term and penalties provided for in subdivisions (a), (c), and (d) shall not be imposed unless the facts set forth in subdivision (a) are charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(2) The additional prison term provided in paragraph (2) of subdivision (a) shall be in addition to any other punishment provided by law, including Section 12022.6, and shall not be limited by any other provision of law.

(c) Any person convicted of two or more felonies, as specified in subdivision (a), shall also be liable for a fine not to exceed five hundred thousand dollars (\$500,000) or double the value of the taking, whichever is greater, if the existence of facts that would make the person subject to the aggravated white collar crime enhancement have been admitted or found to be true by the trier of fact. However, if the pattern of related felony conduct involves the taking of more than one hundred thousand dollars (\$100,000), but not more than five hundred thousand dollars (\$500,000), the fine shall not exceed one hundred thousand dollars (\$100,000) or double the value of the taking, whichever is greater.

(d) Any person convicted of two or more felonies, as specified in subdivision (a), shall be liable for the costs of restitution to victims of the pattern of fraudulent or unlawful conduct, if the existence of facts that would make the person subject to the

1 aggravated white collar crime enhancement have been admitted or
2 found to be true by the trier of fact.

3 (e) (1) If a person is alleged to have committed two or more
4 felonies, as specified in subdivision (a), and the aggravated white
5 collar crime enhancement is also charged, any asset or property
6 that is in the control of that person, and any asset or property that
7 has been transferred by that person to a third party, subsequent to
8 the commission of any criminal act alleged pursuant to subdivision
9 (a), other than in a bona fide purchase, whether found within or
10 outside the state, may be preserved by the superior court in order
11 to pay restitution and fines imposed pursuant to this section. Upon
12 conviction of two or more felonies, as specified in subdivision (a),
13 this property may be levied upon by the superior court to pay
14 restitution and fines imposed pursuant to this section if the
15 existence of facts that would make the person subject to the
16 aggravated white collar crime enhancement have been admitted or
17 found to be true by the trier of fact.

18 (2) To prevent dissipation or secreting of assets or property, the
19 prosecuting agency may, at the same time as or subsequent to the
20 filing of a complaint or indictment charging two or more felonies,
21 as specified in subdivision (a), and the enhancement specified in
22 subdivision (a), file a petition with the criminal division of the
23 superior court of the county in which the accusatory pleading was
24 filed, seeking a temporary restraining order, preliminary
25 injunction, the appointment of a receiver, or any other protective
26 relief necessary to preserve the property or assets. This petition
27 shall commence a proceeding that shall be pendent to the criminal
28 proceeding and maintained solely to effect the criminal remedies
29 provided for in this section. The proceeding shall not be subject to
30 or governed by the provisions of the Civil Discovery Act as set
31 forth in Title 4 (commencing with Section 2016.010) of Part 4 of
32 the Code of Civil Procedure. The petition shall allege that the
33 defendant has been charged with two or more felonies, as specified
34 in subdivision (a), and is subject to the aggravated white collar
35 crime enhancement specified in subdivision (a). The petition shall
36 identify that criminal proceeding and the assets and property to be
37 affected by an order issued pursuant to this section.

38 (3) A notice regarding the petition shall be provided, by
39 personal service or registered mail, to every person who may have
40 an interest in the property specified in the petition. Additionally,



the notice shall be published for at least three successive weeks in a newspaper of general circulation in the county where the property affected by an order issued pursuant to this section is located. The notice shall state that any interested person may file a verified claim with the superior court stating the nature and amount of their claimed interest. The notice shall set forth the time within which a claim of interest in the protected property is required to be filed.

(4) If the property to be preserved is real property, the prosecuting agency shall record, at the time of filing the petition, a lis pendens in each county in which the real property is situated which specifically identifies the property by legal description, the name of the owner of record as shown on the latest equalized assessment roll, and the assessor's parcel number.

(5) If the property to be preserved are assets under the control of a banking or financial institution, the prosecuting agency, at the time of the filing of the petition, may obtain an order from the court directing the banking or financial institution to immediately disclose the account numbers and value of the assets of the accused held by the banking or financial institution. The prosecuting agency shall file a supplemental petition, specifically identifying which banking or financial institution accounts shall be subject to a temporary restraining order, preliminary injunction, or other protective remedy.

(6) Any person claiming an interest in the protected property may, at any time within 30 days from the date of the first publication of the notice of the petition, or within 30 days after receipt of actual notice, file with the superior court of the county in which the action is pending a verified claim stating the nature and amount of his or her interest in the property or assets. A verified copy of the claim shall be served by the claimant on the Attorney General or district attorney, as appropriate.

(7) The imposition of fines and restitution pursuant to this section shall be determined by the superior court in which the underlying criminal offense is sentenced. Any judge who is assigned to the criminal division of the superior court in the county where the petition is filed may issue a temporary restraining order in conjunction with, or subsequent to, the filing of an allegation pursuant to this section. Any subsequent hearing on the petition shall also be heard by a judge assigned to the criminal division of

1 the superior court in the county in which the petition is filed. At
2 the time of the filing of an information or indictment in the
3 underlying criminal case, any subsequent hearing on the petition
4 shall be heard by the superior court judge assigned to the
5 underlying criminal case.

6 (f) Concurrent with or subsequent to the filing of the petition,
7 the prosecuting agency may move the superior court for, and the
8 superior court may issue, the following pendente lite orders to
9 preserve the status quo of the property alleged in the petition:

10 (1) An injunction to restrain any person from transferring,
11 encumbering, hypothecating, or otherwise disposing of that
12 property.

13 (2) Appointment of a receiver to take possession of, care for,
14 manage, and operate the assets and properties so that the property
15 may be maintained and preserved. The court may order that a
16 receiver appointed pursuant to this section shall be compensated
17 for all reasonable expenditures made or incurred by him or her in
18 connection with the possession, care, management, and operation
19 of any property or assets that are subject to the provisions of this
20 section.

21 (3) A bond or other undertaking, in lieu of other orders, of a
22 value sufficient to ensure the satisfaction of restitution and fines
23 imposed pursuant to this section.

24 (g) (1) No preliminary injunction may be granted or receiver
25 appointed by the court without notice that meets the requirements
26 of paragraph (3) of subdivision (e) to all known and reasonably
27 ascertainable interested parties and upon a hearing to determine
28 that an order is necessary to preserve the property pending the
29 outcome of the criminal proceedings. A temporary restraining
30 order may be issued by the court, ex parte, pending that hearing in
31 conjunction with or subsequent to the filing of the petition upon
32 the application of the prosecuting attorney. The temporary
33 restraining order may be based upon the sworn declaration of a
34 peace officer with personal knowledge of the criminal
35 investigation that establishes probable cause to believe that
36 aggravated white collar crime has taken place and that the amount
37 of restitution and fines established by this section exceeds or
38 equals the worth of the assets subject to the temporary restraining
39 order. The declaration may include the hearsay statements of
40 witnesses to establish the necessary facts. The temporary

1 restraining order may be issued without notice upon a showing of
2 good cause to the court.

3 (2) The defendant, or a person who has filed a verified claim as
4 provided in paragraph (6) of subdivision (e), shall have the right
5 to have the court conduct an order to show cause hearing within
6 10 days of the service of the request for hearing upon the
7 prosecuting agency, in order to determine whether the temporary
8 restraining order should remain in effect, whether relief should be
9 granted from any lis pendens recorded pursuant to paragraph (4)
10 of subdivision (e), or whether any existing order should be
11 modified in the interests of justice. Upon a showing of good cause,
12 the hearing shall be held within two days of the service of the
13 request for hearing upon the prosecuting agency.

14 (3) In determining whether to issue a preliminary injunction or
15 temporary restraining order in a proceeding brought by a
16 prosecuting agency in conjunction with or subsequent to the filing
17 of an allegation pursuant to this section, the court has the discretion
18 to consider any matter that it deems reliable and appropriate,
19 including hearsay statements, in order to reach a just and equitable
20 decision. The court shall weigh the relative degree of certainty of
21 the outcome on the merits and the consequences to each of the
22 parties of granting the interim relief. If the prosecution is likely to
23 prevail on the merits and the risk of the dissipation of assets
24 outweighs the potential harm to the defendants and the interested
25 parties, the court shall grant injunctive relief. The court shall give
26 significant weight to the following factors:

27 (A) The public interest in preserving the property or assets
28 pendente lite.

29 (B) The difficulty of preserving the property or assets pendente
30 lite where the underlying alleged crimes involve issues of fraud
31 and moral turpitude.

32 (C) The fact that the requested relief is being sought by a public
33 prosecutor on behalf of alleged victims of white collar crimes.

34 (D) The likelihood that substantial public harm has occurred
35 where aggravated white collar crime is alleged to have been
36 committed.

37 (E) The significant public interest involved in compensating
38 the victims of white collar crime and paying court imposed
39 restitution and fines.

(4) The court, in making its orders, may consider a defendant's request for the release of a portion of the property affected by this section in order to pay reasonable legal fees in connection with the criminal proceeding, any necessary and appropriate living expenses pending trial and sentencing, and for the purpose of posting bail. The court shall weigh the needs of the public to retain the property against the needs of the defendant to a portion of the property. The court shall consider the factors listed in paragraph (3) prior to making any order releasing property for these purposes.

(5) The court, in making its orders, shall seek to protect the interests of any innocent third persons, including an innocent spouse, who were not involved in the commission of any criminal activity.

(6) Any petition filed pursuant to this section is part of the criminal proceedings for purposes of appointment of counsel and shall be assigned to the criminal division of the superior court of the county in which the accusatory pleading was filed.

(7) Based upon a noticed motion brought by the receiver appointed pursuant to paragraph (2) of subdivision (f), the court may order an interlocutory sale of property named in the petition when the property is liable to perish, to waste, or to be significantly reduced in value, or when the expenses of maintaining the property are disproportionate to the value thereof. The proceeds of the interlocutory sale shall be deposited with the court or as directed by the court pending determination of the proceeding pursuant to this section.

(8) The court may make any orders that are necessary to preserve the continuing viability of any lawful business enterprise that is affected by the issuance of a temporary restraining order or preliminary injunction issued pursuant to this action.

(9) In making its orders, the court shall seek to prevent any asset subject to a temporary restraining order or preliminary injunction from perishing, spoiling, going to waste, or otherwise being significantly reduced in value. Where the potential for diminution in value exists, the court shall appoint a receiver to dispose of or otherwise protect the value of the property or asset.

(10) A preservation order shall not be issued against any assets of a business that are not likely to be dissipated and that may be subject to levy or attachment to meet the purposes of this section.

1 (h) If the allegation that the defendant is subject to the
2 aggravated white collar crime enhancement is dismissed or found
3 by the trier of fact to be untrue, any preliminary injunction or
4 temporary restraining order issued pursuant to this section shall be
5 dissolved. If a jury is the trier of fact, and the jury is unable to reach
6 a unanimous verdict, the court shall have the discretion to continue
7 or dissolve all or a portion of the preliminary injunction or
8 temporary restraining order based upon the interests of justice.
9 However, if the prosecuting agency elects not to retry the case, any
10 preliminary injunction or temporary restraining order issued
11 pursuant to this section shall be dissolved.

12 (i) (1) (A) If the defendant is convicted of two or more
13 felonies, as specified in subdivision (a), and the existence of facts
14 that would make the person subject to the aggravated white collar
15 crime enhancement have been admitted or found to be true by the
16 trier of fact, the trial judge shall continue the preliminary
17 injunction or temporary restraining order until the date of the
18 criminal sentencing and shall make a finding at that time as to what
19 portion, if any, of the property or assets subject to the preliminary
20 injunction or temporary restraining order shall be levied upon to
21 pay fines and restitution to victims of the crime. The order
22 imposing fines and restitution may exceed the total worth of the
23 property or assets subjected to the preliminary injunction or
24 temporary restraining order. The court may order the immediate
25 transfer of the property or assets to satisfy any judgment and
26 sentence made pursuant to this section. Additionally, upon motion
27 of the prosecution, the court may enter an order as part of the
28 judgment and sentence making the order imposing fines and
29 restitution pursuant to this section enforceable pursuant to Title 9
30 (commencing with Section 680.010) of Part 2 of the Code of Civil
31 Procedure.

32 (B) Additionally, the court shall order the defendant to make
33 full restitution to the victim or to make restitution to the victim
34 based on his or her ability to pay, as defined in subdivision (b) of
35 Section 1203.1b. The payment of the restitution ordered by the
36 court pursuant to this section shall be made a condition of any
37 probation granted by the court if the existence of facts that would
38 make the defendant subject to the aggravated white collar crime
39 enhancement have been admitted or found to be true by the trier
40 of fact. Notwithstanding any other provision of law, the court may

1 order that the period of probation continue for up to 10 years or
2 until full restitution is made to the victim, whichever is earlier.

3 (C) The sentencing court shall retain jurisdiction to enforce the
4 order to pay additional fines and restitution and, in appropriate
5 cases, may initiate probation violation proceedings or contempt of
6 court proceedings against a defendant who is found to have
7 willfully failed to comply with any lawful order of the court.

8 (D) If the execution of judgment is stayed pending an appeal of
9 an order of the superior court pursuant to this section, the
10 preliminary injunction or temporary restraining order shall be
11 maintained in full force and effect during the pendency of the
12 appellate period.

13 (2) The order imposing fines and restitution shall not affect the
14 interest in real property of any third party that was acquired prior
15 to the recording of the lis pendens, unless the property was
16 obtained from the defendant other than as a bona fide purchaser for
17 value. If any assets or property affected by this section are subject
18 to a valid lien, mortgage, security interest, or interest under a
19 conditional sales contract and the amount due to the holder of the
20 lien, mortgage, interest, or contract is less than the appraised value
21 of the property, that person may pay to the state or the local
22 government that initiated the proceeding the amount of the
23 difference between the appraised value of the property and the
24 amount of the lien, mortgage, security interest, or interest under a
25 conditional sales contract. Upon that payment, the state or local
26 entity shall relinquish all claims to the property. If the holder of the
27 interest elects not to make that payment to the state or local
28 governmental entity, the interest in the property shall be deemed
29 transferred to the state or local governmental entity and any indicia
30 of ownership of the property shall be confirmed in the state or local
31 governmental entity. The appraised value shall be determined as
32 of the date judgment is entered either by agreement between the
33 holder of the lien, mortgage, security interest, or interest under a
34 conditional sales contract and the governmental entity involved,
35 or if they cannot agree, then by a court-appointed appraiser for the
36 county in which the action is brought. A person holding a valid
37 lien, mortgage, security interest, or interest under a conditional
38 sales contract shall be paid the appraised value of his or her
39 interest.



1 (3) In making its final order, the court shall seek to protect the
2 legitimately acquired interests of any innocent third persons,
3 including an innocent spouse, who were not involved in the
4 commission of any criminal activity.

5 (j) In all cases where property is to be levied upon pursuant to
6 this section, a receiver appointed by the court shall be empowered
7 to liquidate all property or assets which shall be distributed in the
8 following order of priority:

9 (1) To the receiver, or court-appointed appraiser, for all
10 reasonable expenditures made or incurred by him or her in
11 connection with the sale of the property or liquidation of assets,
12 including all reasonable expenditures for any necessary repairs,
13 storage, or transportation of any property levied upon under this
14 section.

15 (2) To any holder of a valid lien, mortgage, or security interest
16 up to the amount of his or her interest in the property or proceeds.

17 (3) To any victim as restitution for any fraudulent or unlawful
18 acts alleged in the accusatory pleading that were proven by the
19 prosecuting agency as part of the pattern of fraudulent or unlawful
20 acts.

21 (4) For payment of any fine imposed pursuant to this section.
22 The proceeds obtained in payment of a fine shall be paid to the
23 treasurer of the county in which the judgment was entered, or if the
24 action was undertaken by the Attorney General, to the Treasurer.
25 If the payment of any fine imposed pursuant to this section
26 involved losses resulting from violation of Section 550 of this code
27 or Section 1871.4 of the Insurance Code, one-half of the fine
28 collected shall be paid to the treasurer of the county in which the
29 judgment was entered, and one-half of the fine collected shall be
30 paid to the Department of Insurance for deposit in the appropriate
31 account in the Insurance Fund. The proceeds from the fine first
32 shall be used by a county to reimburse local prosecutors and
33 enforcement agencies for the reasonable costs of investigation and
34 prosecution of cases brought pursuant to this section.

35 (5) To the Restitution Fund, or in cases involving convictions
36 relating to insurance fraud, to the Insurance Fund as restitution for
37 crimes not specifically pleaded and proven in the accusatory
38 pleading.

39 (k) If, after distribution pursuant to paragraphs (1) and (2) of
40 subdivision (j), the value of the property to be levied upon pursuant

1 to this section is insufficient to pay for restitution and fines, the
2 court shall order an equitable sharing of the proceeds of the
3 liquidation of the property, and any other recoveries, which shall
4 specify the percentage of recoveries to be devoted to each purpose.
5 At least 70 percent of the proceeds remaining after distribution
6 pursuant to paragraphs (1) and (2) of subdivision (j) shall be
7 devoted to restitution.

8 (l) Unless otherwise expressly provided, the remedies or
9 penalties provided by this section are cumulative to each other and
10 to the remedies or penalties available under all other laws of this
11 state, except that two separate actions against the same defendant
12 and pertaining to the same fraudulent or unlawful acts may not be
13 brought by a district attorney or the Attorney General pursuant to
14 this section and Chapter 5 (commencing with Section 17200) of
15 Part 2 of Division 7 of the Business and Professions Code. If a fine
16 is imposed under this section, it shall be in lieu of all other fines
17 that may be imposed pursuant to any other provision of law for the
18 crimes for which the defendant has been convicted in the action.

19 SEC. 50. Section 1054.6 of the Penal Code is amended to
20 read:

21 1054.6. Neither the defendant nor the prosecuting attorney is
22 required to disclose any materials or information which are work
23 product as defined in subdivision (a) of Section 2018.030 of the
24 Code of Civil Procedure, or which are privileged pursuant to an
25 express statutory provision, or are privileged as provided by the
26 Constitution of the United States.

27 SEC. 51. Section 1524 of the Penal Code is amended to read:

28 1524. (a) A search warrant may be issued upon any of the
29 following grounds:

30 (1) When the property was stolen or embezzled.

31 (2) When the property or things were used as the means of
32 committing a felony.

33 (3) When the property or things are in the possession of any
34 person with the intent to use them as a means of committing a
35 public offense, or in the possession of another to whom he or she
36 may have delivered them for the purpose of concealing them or
37 preventing their being discovered.

38 (4) When the property or things to be seized consist of any item
39 or constitute any evidence that tends to show a felony has been

1 committed, or tends to show that a particular person has committed
2 a felony.

3 (5) When the property or things to be seized consist of evidence
4 that tends to show that sexual exploitation of a child, in violation
5 of Section 311.3, or possession of matter depicting sexual conduct
6 of a person under the age of 18 years, in violation of Section
7 311.11, has occurred or is occurring.

8 (6) When there is a warrant to arrest a person.

9 (7) When a provider of electronic communication service or
10 remote computing service has records or evidence, as specified in
11 Section 1524.3, showing that property was stolen or embezzled
12 constituting a misdemeanor, or that property or things are in the
13 possession of any person with the intent to use them as a means of
14 committing a misdemeanor public offense, or in the possession of
15 another to whom he or she may have delivered them for the
16 purpose of concealing them or preventing their discovery.

17 (b) The property or things or person or persons described in
18 subdivision (a) may be taken on the warrant from any place, or
19 from any person in whose possession the property or things may
20 be.

21 (c) Notwithstanding subdivision (a) or (b), no search warrant
22 shall issue for any documentary evidence in the possession or
23 under the control of any person, who is a lawyer as defined in
24 Section 950 of the Evidence Code, a physician as defined in
25 Section 990 of the Evidence Code, a psychotherapist as defined in
26 Section 1010 of the Evidence Code, or a member of the clergy as
27 defined in Section 1030 of the Evidence Code, and who is not
28 reasonably suspected of engaging or having engaged in criminal
29 activity related to the documentary evidence for which a warrant
30 is requested unless the following procedure has been complied
31 with:

32 (1) At the time of the issuance of the warrant the court shall
33 appoint a special master in accordance with subdivision (d) to
34 accompany the person who will serve the warrant. Upon service
35 of the warrant, the special master shall inform the party served of
36 the specific items being sought and that the party shall have the
37 opportunity to provide the items requested. If the party, in the
38 judgment of the special master, fails to provide the items
39 requested, the special master shall conduct a search for the items
40 in the areas indicated in the search warrant.

1 (2) If the party who has been served states that an item or items
2 should not be disclosed, they shall be sealed by the special master
3 and taken to court for a hearing.

4 At the hearing, the party searched shall be entitled to raise any
5 issues that may be raised pursuant to Section 1538.5 as well as a
6 claim that the item or items are privileged, as provided by law. The
7 hearing shall be held in the superior court. The court shall provide
8 sufficient time for the parties to obtain counsel and make any
9 motions or present any evidence. The hearing shall be held within
10 three days of the service of the warrant unless the court makes a
11 finding that the expedited hearing is impracticable. In that case the
12 matter shall be heard at the earliest possible time.

13 If an item or items are taken to court for a hearing, any
14 limitations of time prescribed in Chapter 2 (commencing with
15 Section 797) of Title 3 of Part 2 shall be tolled from the time of the
16 seizure until the final conclusion of the hearing, including any
17 associated writ or appellate proceedings.

18 (3) The warrant shall, whenever practicable, be served during
19 normal business hours. In addition, the warrant shall be served
20 upon a party who appears to have possession or control of the items
21 sought. If, after reasonable efforts, the party serving the warrant
22 is unable to locate the person, the special master shall seal and
23 return to the court, for determination by the court, any item that
24 appears to be privileged as provided by law.

25 (d) As used in this section, a “special master” is an attorney
26 who is a member in good standing of the California State Bar and
27 who has been selected from a list of qualified attorneys that is
28 maintained by the State Bar particularly for the purposes of
29 conducting the searches described in this section. These attorneys
30 shall serve without compensation. A special master shall be
31 considered a public employee, and the governmental entity that
32 caused the search warrant to be issued shall be considered the
33 employer of the special master and the applicable public entity, for
34 purposes of Division 3.6 (commencing with Section 810) of Title
35 1 of the Government Code, relating to claims and actions against
36 public entities and public employees. In selecting the special
37 master, the court shall make every reasonable effort to ensure that
38 the person selected has no relationship with any of the parties
39 involved in the pending matter. Any information obtained by the

1 special master shall be confidential and shall not be divulged
2 except in direct response to inquiry by the court.

3 In any case in which the magistrate determines that, after
4 reasonable efforts have been made to obtain a special master, a
5 special master is not available and would not be available within
6 a reasonable period of time, the magistrate may direct the party
7 seeking the order to conduct the search in the manner described in
8 this section in lieu of the special master.

9 (e) Any search conducted pursuant to this section by a special
10 master may be conducted in a manner that permits the party
11 serving the warrant or his or her designee to accompany the special
12 master as he or she conducts his or her search. However, that party
13 or his or her designee shall not participate in the search nor shall
14 he or she examine any of the items being searched by the special
15 master except upon agreement of the party upon whom the warrant
16 has been served.

17 (f) As used in this section, “documentary evidence” includes,
18 but is not limited to, writings, documents, blueprints, drawings,
19 photographs, computer printouts, microfilms, X-rays, files,
20 diagrams, ledgers, books, tapes, audio and video recordings, films
21 or papers of any type or description.

22 (g) No warrant shall issue for any item or items described in
23 Section 1070 of the Evidence Code.

24 (h) Notwithstanding any other law, no claim of attorney work
25 product as described in Chapter 4 (commencing with Section
26 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure shall
27 be sustained where there is probable cause to believe that the
28 lawyer is engaging or has engaged in criminal activity related to
29 the documentary evidence for which a warrant is requested unless
30 it is established at the hearing with respect to the documentary
31 evidence seized under the warrant that the services of the lawyer
32 were not sought or obtained to enable or aid anyone to commit or
33 plan to commit a crime or a fraud.

34 (i) Nothing in this section is intended to limit an attorney’s
35 ability to request an in camera hearing pursuant to the holding of
36 the Supreme Court of California in *People v. Superior Court (Laff)*
37 (2001) 25 Cal.4th 703.

38 (j) In addition to any other circumstance permitting a
39 magistrate to issue a warrant for a person or property in another
40 county, when the property or things to be seized consist of any item

1 or constitute any evidence that tends to show a violation of Section
2 530.5, the magistrate may issue a warrant to search a person or
3 property located in another county if the person whose identifying
4 information was taken or used resides in the same county as the
5 issuing court.

6 SEC. 52. Section 451 of the Probate Code is amended to read:

7 451. (a) For the purpose of appraisal of property in the estate,
8 the probate referee may require, and may issue a subpoena to
9 compel, the appearance before the referee of the personal
10 representative, guardian, conservator, or other fiduciary, an
11 interested person, or any other person the referee has reason to
12 believe has knowledge of the property.

13 (b) A subpoena issued under subdivision (a) is subject to the
14 provisions of Chapter 6 (commencing with Section 2020.010) of
15 Title 4 of Part 4 of the Code of Civil Procedure governing
16 deposition subpoenas.

17 SEC. 53. Section 452 of the Probate Code is amended to read:

18 452. (a) The probate referee may:

19 (1) Examine and take the testimony under oath of a person
20 appearing before the referee.

21 (2) Require, and issue a subpoena to compel, the person to
22 produce any document in the person's possession or control,
23 concerning the value of any property in the estate.

24 (b) A subpoena issued under subdivision (a) is subject to the
25 provisions of Chapter 6 (commencing with Section 2020.010) of
26 Title 4 of Part 4 of the Code of Civil Procedure governing
27 deposition subpoenas.

28 SEC. 54. Section 20104.4 of the Public Contract Code is
29 amended to read:

30 20104.4. The following procedures are established for all
31 civil actions filed to resolve claims subject to this article:

32 (a) Within 60 days, but no earlier than 30 days, following the
33 filing or responsive pleadings, the court shall submit the matter to
34 nonbinding mediation unless waived by mutual stipulation of both
35 parties. The mediation process shall provide for the selection
36 within 15 days by both parties of a disinterested third person as
37 mediator, shall be commenced within 30 days of the submittal, and
38 shall be concluded within 15 days from the commencement of the
39 mediation unless a time requirement is extended upon a good cause
40 showing to the court or by stipulation of both parties. If the parties

1 fail to select a mediator within the 15-day period, any party may
2 petition the court to appoint the mediator.

3 (b) (1) If the matter remains in dispute, the case shall be
4 submitted to judicial arbitration pursuant to Chapter 2.5
5 (commencing with Section 1141.10) of Title 3 of Part 3 of the
6 Code of Civil Procedure, notwithstanding Section 1141.11 of that
7 code. The Civil Discovery Act (Title 4 (commencing with Section
8 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to
9 any proceeding brought under this subdivision consistent with the
10 rules pertaining to judicial arbitration.

11 (2) Notwithstanding any other provision of law, upon
12 stipulation of the parties, arbitrators appointed for purposes of this
13 article shall be experienced in construction law, and, upon
14 stipulation of the parties, mediators and arbitrators shall be paid
15 necessary and reasonable hourly rates of pay not to exceed their
16 customary rate, and such fees and expenses shall be paid equally
17 by the parties, except in the case of arbitration where the arbitrator,
18 for good cause, determines a different division. In no event shall
19 these fees or expenses be paid by state or county funds.

20 (3) In addition to Chapter 2.5 (commencing with Section
21 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any
22 party who after receiving an arbitration award requests a trial de
23 novo but does not obtain a more favorable judgment shall, in
24 addition to payment of costs and fees under that chapter, pay the
25 attorney's fees of the other party arising out of the trial de novo.

26 (c) The court may, upon request by any party, order any
27 witnesses to participate in the mediation or arbitration process.

28 SEC. 55. Section 3357 of the Public Resources Code is
29 amended to read:

30 3357. In any proceeding before the director, and in any
31 proceeding instituted by the supervisor for the purpose of
32 enforcing or carrying out the provisions of this division, or for the
33 purpose of holding an investigation to ascertain the condition of
34 any well or wells complained of, or which in the opinion of the
35 supervisor may reasonably be presumed to be improperly located,
36 drilled, operated, maintained, or conducted, the supervisor and the
37 director shall have the power to administer oaths and may apply
38 to a judge of the superior court of the county in which the
39 proceeding or investigation is pending for a subpoena for
40 witnesses to attend the proceeding or investigation. Upon the

1 application of the supervisor or the director, the judge of the
2 superior court shall issue a subpoena directing the witness to attend
3 the proceeding or investigation, and such person shall be required
4 to produce, when directed, all records, surveys, documents, books,
5 or accounts in the witness' custody or under the witness' control;
6 except that no person shall be required to attend upon such
7 proceeding unless the person resides within the same county or
8 within 100 miles of the place of attendance. The supervisor or the
9 director may in such case cause the depositions of witnesses
10 residing within or without the state to be taken in the manner
11 prescribed by law for like depositions in civil actions in superior
12 courts of this state under Title 4 (commencing with Section
13 2016.010) of Part 4 of the Code of Civil Procedure, and may, upon
14 application to a judge of the superior court of the county within
15 which the proceeding or investigation is pending, obtain a
16 subpoena compelling the attendance of witnesses and the
17 production of records, surveys, documents, books, or accounts at
18 such places as the judge may designate within the limits prescribed
19 in this section.

20 SEC. 56. Section 3769 of the Public Resources Code is
21 amended to read:

22 3769. In any proceeding instituted by the supervisor for the
23 purpose of enforcing or carrying out the provisions of this chapter,
24 or for the purpose of holding an investigation to ascertain the
25 condition of any well or wells complained of, or which in the
26 opinion of the supervisor may reasonably be presumed to be
27 improperly located, drilled, operated, maintained, or conducted,
28 the supervisor shall have the power to administer oaths and may
29 apply to a judge of the superior court of the county in which the
30 proceeding or investigation is pending, for a subpoena for
31 witnesses to attend the proceeding or investigation. Upon the
32 application of the supervisor, the judge of the superior court shall
33 issue a subpoena directing the witness to attend the proceeding or
34 investigation, and such person shall be required to produce, when
35 directed, all records, surveys, documents, books, or accounts in the
36 witness' custody or under the witness' control; except that no
37 person shall be required to attend upon such proceeding, unless the
38 person resides within the same county or within 100 miles of the
39 place of attendance.



The supervisor may in such case cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in superior courts of this state under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure, and may, upon application to a judge of the superior court of the county within which the proceeding or investigation is pending, obtain a subpoena compelling the attendance of witnesses and the production of records, surveys, documents, books, or accounts at such places as the judge may designate within the limits prescribed in this section.

SEC. 57. Section 1794 of the Public Utilities Code is amended to read:

1794. The commission or any commissioner or any party may, in any investigation or hearing before the commission, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this state under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure and to that end may compel the attendance of witnesses and the production of books, waybills, documents, papers, and accounts.

SEC. 58. Section 25110 of the Revenue and Taxation Code is amended to read:

25110. (a) Notwithstanding Section 25101, a qualified taxpayer, as defined in paragraph (2) of subdivision (b), that is subject to the tax imposed under this part, may elect to determine its income derived from or attributable to sources within this state pursuant to a water's-edge election in accordance with the provisions of this part, as modified by this article. A taxpayer that makes a water's-edge election shall take into account the income and apportionment factors of the following affiliated entities only:

(1) Domestic international sales corporations, as described in Sections 991 to 994, inclusive, of the Internal Revenue Code and foreign sales corporations as described in Sections 921 to 927, inclusive, of the Internal Revenue Code.

(2) Any corporation (other than a bank), regardless of the place where it is incorporated if the average of its property, payroll, and sales factors within the United States is 20 percent or more.

(3) Corporations that are incorporated in the United States, excluding corporations making an election pursuant to Sections 931 to 936, inclusive, of the Internal Revenue Code, of which more than 50 percent of their voting stock is owned or controlled directly or indirectly by the same interests.

(4) A corporation that is not described in paragraphs (1) to (3), inclusive, or paragraph (5), but only to the extent of its income derived from or attributable to sources within the United States and its factors assignable to a location within the United States in accordance with paragraph (3) of subdivision (b). Income of that corporation derived from or attributable to sources within the United States as determined by federal income tax laws shall be limited to and determined from the books of account maintained by the corporation with respect to its activities conducted within the United States.

(5) Export trade corporations, as described in Sections 970 to 972, inclusive, of the Internal Revenue Code.

(6) Any affiliated corporation which is a “controlled foreign corporation,” as defined in Section 957 of the Internal Revenue Code, if all or part of the income of that affiliate is defined in Section 952 of Subpart F of the Internal Revenue Code (“Subpart F income”). The income and apportionment factors of any affiliate to be included under this paragraph shall be determined by multiplying the income and apportionment factors of that affiliate without application of this paragraph by a fraction (not to exceed one), the numerator of which is the “Subpart F income” of that corporation for that taxable year and the denominator of which is the “earnings and profits” of that corporation for that taxable year, as defined in Section 964 of the Internal Revenue Code.

(7) (A) The income and factors of the above-enumerated corporations shall be taken into account only if the income and factors would have been taken into account under Section 25101 if this section had not been enacted.

(B) The income and factors of a corporation that is not described in paragraphs (1) to (3), inclusive, and paragraph (5) and that is an electing taxpayer under this subdivision shall be taken into account in determining its income only to the extent set forth in paragraph (4).

(b) For purposes of this article and Section 24411:

1 (1) An “affiliated corporation” means a corporation that is a
2 member of a commonly controlled group as defined in Section
3 25105.

4 (2) A “qualified taxpayer” means a corporation which does
5 both of the following:

6 (A) Files with the state tax return on which the water’s-edge
7 election is made a consent to the taking of depositions at the time
8 and place most reasonably convenient to all parties from key
9 domestic corporate individuals and to the acceptance of subpoenas
10 duces tecum requiring reasonable production of documents to the
11 Franchise Tax Board as provided in Section 19504 or by the State
12 Board of Equalization as provided in Title 18, California Code of
13 Regulations, Section 5005, or by the courts of this state as provided
14 in Chapter 2 (commencing with Section 1985) of Title 3 of Part 4
15 of, and Chapter 9 (commencing with Section 2025.010) of Title 4
16 of Part 4 of, the Code of Civil Procedure. The consent relates to
17 issues of jurisdiction and service and does not waive any defenses
18 a taxpayer may otherwise have. The consent shall remain in effect
19 so long as the water’s-edge election is in effect and shall be limited
20 to providing that information necessary to review or to adjust
21 income or deductions in a manner authorized under Sections 482,
22 861, Subpart F of Part III of Subchapter N, or similar provisions
23 of the Internal Revenue Code, together with the regulations
24 adopted pursuant to those provisions, and for the conduct of an
25 investigation with respect to any unitary business in which the
26 taxpayer may be involved.

27 (B) Agrees that for purposes of this article, dividends received
28 by any corporation whose income and apportionment factors are
29 taken into account pursuant to subdivision (a) from either of the
30 following are functionally related dividends and shall be presumed
31 to be business income:

32 (i) A corporation of which more than 50 percent of the voting
33 stock is owned, directly or indirectly, by members of the unitary
34 group and which is engaged in the same general line of business.

35 (ii) Any corporation that is either a significant source of supply
36 for the unitary business or a significant purchaser of the output of
37 the unitary business, or that sells a significant part of its output or
38 obtains a significant part of its raw materials or input from the
39 unitary business. “Significant,” as used in this subparagraph,
40 means an amount of 15 percent or more of either input or output.

1 All other dividends shall be classified as business or
2 nonbusiness income without regard to this subparagraph.

3 (3) The definitions and locations of property, payroll, and sales
4 shall be determined under the laws and regulations that set forth
5 the apportionment formulas used by the individual states to assign
6 net income subject to taxes on or measured by net income in that
7 state. If a state does not impose a tax on or measured by net income
8 or does not have laws or regulations with respect to the assignment
9 of property, payroll, and sales, the laws and regulations provided
10 in Article 2 (commencing with Section 25120) shall apply.

11 Sales shall be considered to be made to a state only if the
12 corporation making the sale may otherwise be subject to a tax on
13 or measured by net income under the Constitution or laws of the
14 United States, and shall not include sales made to a corporation
15 whose income and apportionment factors are taken into account
16 pursuant to subdivision (a) in determining the amount of income
17 of the taxpayer derived from or attributable to sources within this
18 state.

19 (4) “The United States” means the 50 states of the United
20 States and the District of Columbia.

21 (c) All references in this part to income determined pursuant to
22 Section 25101 shall also mean income determined pursuant to this
23 section.

24 SEC. 59. Section 3050.1 of the Vehicle Code is amended to
25 read:

26 3050.1. (a) In a proceeding, hearing, or in the discharge of
27 duties imposed under this chapter, the board, its executive director,
28 or an administrative law judge designated by the board may
29 administer oaths, take depositions, certify to official acts, and issue
30 subpoenas to compel attendance of witnesses and the production
31 of books, records, papers, and other documents in any part of the
32 state.

33 (b) For purposes of discovery, the board or its executive
34 director may, if deemed appropriate and proper under the
35 circumstances, authorize the parties to engage in the civil action
36 discovery procedures in Title 4 (commencing with Section
37 2016.010) of Part 4 of the Code of Civil Procedure, excepting the
38 provisions of Chapter 13 (commencing with Section 2030.010) of
39 that title. Discovery shall be completed no later than 15 days prior
40 to the commencement of the proceeding or hearing before the

1 board. This subdivision shall apply only to those proceedings or
2 hearings involving a petition or protest filed pursuant to
3 subdivision (c) or (d) of Section 3050. The board, its executive
4 director, or an administrative law judge designated by the board
5 may issue subpoenas to compel attendance at depositions of
6 persons having knowledge of the acts, omissions, or events that are
7 the basis for the proceedings, as well as the production of books,
8 records, papers, and other documents.

9 SEC. 60. Section 1100 of the Water Code is amended to read:

10 1100. The board or any party to a proceeding before it may,
11 in any investigation or hearing, cause the deposition of witnesses
12 residing within or without the state to be taken in the manner
13 prescribed by law for depositions in civil actions in the superior
14 courts of this state under Title 4 (commencing with Section
15 2016.010) of Part 4 of the Code of Civil Procedure.

16 SEC. 61. Nothing in this act is intended to substantively
17 change the law of civil discovery.

18 SEC. 62. *Section 23.5 of this bill incorporates the substance*
19 *of changes to the Civil Discovery Act proposed by this bill and AB*
20 *3078. It shall only become operative if (1) both bills are enacted*
21 *and become effective on or before January 1, 2005, (2) each bill*
22 *affects provisions of the Civil Discovery Act, and (3) this bill is*
23 *enacted after AB 3078, in which case Sections 2024 and 2034 of*
24 *the Code of Civil Procedure as amended by AB 3078 shall remain*
25 *operative only until the operative date of this bill, at which time*
26 *Section 23.5 of this bill shall become operative, and Section*
27 *2016.060 of the Code of Civil Procedure as added by Section 23*
28 *of this bill shall not become operative.*

29 SEC. 63. *Except as specified in Sections 23.5 and 62 of this*
30 *act, any section of any act enacted by the Legislature during the*
31 *2004 calendar year that takes effect on or before January 1, 2005,*
32 *and that amends, amends and renumbers, adds, repeals and adds,*
33 *or repeals a section that is amended, amended and renumbered,*
34 *added, repealed and added, or repealed by Section 1 to Section 21,*
35 *inclusive, or Section 24 to Section 60, inclusive, of this act shall*
36 *prevail over this act, whether that act is enacted prior to, or*
37 *subsequent to, the enactment of this act.*

38 SEC. 64. This act becomes operative on July 1, 2005.

O