

AMENDED IN ASSEMBLY MAY 15, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 1225

Introduced by Committee on Judiciary (Isenberg (Chairman), ~~Alby~~ as presented by Assembly Member Morrow on behalf of the Committee (Alby, Archie-Hudson, Battin, House Figueroa, House, Isenberg, Knight, Knowles, Kuehl, ~~Morrow~~, and Sher)

February 23, 1995

~~An act to add Section 2016.5 to the Code of Civil Procedure, An act to amend Sections 116.820, 1013, 1013a, 1218, 2019, and 2025 of, and to add Section 116.745 to, the Code of Civil Procedure, relating to civil procedure.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1225, as amended, Committee on Judiciary. Civil procedure: ~~holidays~~.

Existing law governing civil procedure provides for motions to vacate a judgment of a small claims court, extensions of time following the service of documents by specified means, proof of service, the powers of a court to punish acts of contempt, and limitations on discovery.

This bill would make a nonsubstantive change regarding motions to vacate a small claims court judgment, revise various provisions regarding extension of time following the service of documents by specified means, add provisions governing the proof of time of service by the clerk of the court by mail, authorize a court to order a party held in contempt

to pay reasonable attorney’s fees and costs incurred by the party initiating contempt proceedings, and revise provisions allowing further discovery for specific purposes.

Existing law provides that if the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, as defined to include, among other days, Saturday and Sunday, the deadline for that act is extended to and including the next day that is not a holiday.

This bill would specify that this provision applies to any act provided or required by specified provisions of law regarding civil discovery.

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 2016.5 is added to the Code of~~
2 ~~Civil Procedure, to read:~~

3 ~~2016.5. Section 12a shall apply to this article.~~

4 *SECTION 1. Section 116.745 is added to the Code of*
5 *Civil Procedure, to read:*

6 *116.745. The clerk shall charge and collect fees for the*
7 *filing of a motion to vacate, as provided by Section 26830*
8 *of the Government Code.*

9 *SEC. 2. Section 116.820 of the Code of Civil Procedure*
10 *is amended to read:*

11 116.820. (a) The judgment of a small claims court
12 may be enforced as provided in Title 9 (commencing
13 with Section 680.010) of Part 2 and in Sections 674 and
14 1174 on the enforcement of judgments of other courts. A
15 judgment of the superior court after a hearing on appeal,
16 and after transfer to the small claims court under
17 subdivision (d) of Section 116.780, may be enforced like
18 other judgments of the small claims court, as provided in
19 Title 9 (commencing with Section 680.010) of Part 2 and
20 in Sections 674 and 1174 on the enforcement of judgments
21 of other courts.

22 (b) Fees as provided in Sections 26828, ~~26830,~~ and
23 26834 of the Government Code shall be charged and



1 collected by the clerk for the issuance of a writ of
2 execution, an order of examination of a judgment debtor,
3 ~~a motion to vacate~~, or an abstract of judgment.

4 (c) The prevailing party in any action subject to this
5 chapter is entitled to the costs of enforcing the judgment
6 and accrued interest.

7 *SEC. 3. Section 1013 of the Code of Civil Procedure is*
8 *amended to read:*

9 1013. (a) In case of service by mail, the notice or
10 other paper must be deposited in a post office, mailbox,
11 sub-post office, substation, or mail chute, or other like
12 facility regularly maintained by the United States Postal
13 Service, in a sealed envelope, with postage paid,
14 addressed to the person on whom it is to be served, at the
15 office address as last given by that person on any
16 document filed in the cause and served on the party
17 making service by mail; otherwise at that party's place of
18 residence. The service is complete at the time of the
19 deposit, but any ~~prescribed~~ period of notice and any right
20 or duty to do any act or make any response within any
21 ~~prescribed~~ period or on a date certain after the service of
22 the document ~~served by mail~~, *which time period or date*
23 *is prescribed by statute or rule of court*, shall be extended
24 five days, *upon service by mail*, if the place of address is
25 within the State of California, 10 days if the place of
26 address is outside the State of California but within the
27 United States, and 20 days if the place of address is outside
28 the United States, but the extension shall not apply to
29 extend the time for filing notice of intention to move for
30 new trial, notice of intention to move to vacate judgment
31 pursuant to Section 663a, or notice of appeal. *This*
32 *extension applies in the absence of a specific exception*
33 *provided for by this section or other statute or rule of*
34 *court.*

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

39 (c) In case of service by Express Mail, the notice or
40 other paper must be deposited in a post office, mailbox,

1 sub-post office, substation, or mail chute, or other like
2 facility regularly maintained by the United States Postal
3 Service for receipt of Express Mail, in a sealed envelope,
4 with Express Mail postage paid, addressed to the person
5 on whom it is to be served, at the office address as last
6 given by that person on any document filed in the cause
7 and served on the party making service by Express Mail;
8 otherwise at that party's place of residence. In case of
9 service by another method of delivery providing for
10 overnight delivery, the notice or other paper must be
11 deposited in a box or other facility regularly maintained
12 by the express service carrier, or delivered to an
13 authorized courier or driver authorized by the express
14 service carrier to receive documents, in an envelope or
15 package designated by the express service carrier with
16 delivery fees paid or provided for, addressed to the
17 person on whom it is to be served, at the office address as
18 last given by that person on any document filed in the
19 cause and served on the party making service; otherwise
20 at that party's place of residence. The service is complete
21 at the time of the deposit, but any ~~prescribed~~ period of
22 notice and any right or duty to do any act or make any
23 response within any ~~prescribed~~ period or on a date
24 certain after the service of the document served by
25 Express Mail or other method of delivery providing for
26 overnight delivery shall be extended by two court days,
27 but the extension shall not apply to extend the time for
28 filing notice of intention to move for new trial, notice of
29 intention to move to vacate judgment pursuant to Section
30 663a, or notice of appeal. *This extension applies in the*
31 *absence of a specific exception provided for by this*
32 *section or other statute or rule of court.*

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

39 (e) Service by facsimile transmission shall be
40 permitted only where the parties agree and a written



1 confirmation of that agreement is made. The Judicial
2 Council may adopt rules implementing the service of
3 documents by facsimile transmission and may provide a
4 form for the confirmation of the agreement required by
5 this subdivision. In case of service by facsimile
6 transmission, the notice or other paper must be
7 transmitted to a facsimile machine maintained by the
8 person on whom it is served at the facsimile machine
9 telephone number as last given by that person on any
10 document which he or she has filed in the cause and
11 served on the party making the service. The service is
12 complete at the time of transmission, but any ~~prescribed~~
13 period of notice and any right or duty to do any act or
14 make any response within any ~~prescribed~~ period or on a
15 date certain after the service of the document ~~served by~~
16 ~~facsimile transmission~~, *which time period or date is*
17 *prescribed by statute or rule of court*, shall be extended,
18 *after service by facsimile transmission*, by two court days,
19 but the extension shall not apply to extend the time for
20 filing notice of intention to move for new trial, notice of
21 intention to move to vacate judgment pursuant to Section
22 663a, or notice of appeal. *This extension applies in the*
23 *absence of a specific exception provided for by this*
24 *section or other statute or rule of court.*

25 (f) The copy of the notice or other paper served by
26 facsimile transmission pursuant to this chapter shall bear
27 a notation of the date and place of transmission and the
28 facsimile telephone number to which transmitted or be
29 accompanied by an unsigned copy of the affidavit or
30 certificate of transmission which shall contain the
31 facsimile telephone number to which the notice or other
32 paper was transmitted.

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

34 *SEC. 4. Section 1013a of the Code of Civil Procedure*
35 *is amended to read:*

36 1013a. Proof of service by mail may be made by one
37 of the following methods:

38 (1) An affidavit setting forth the exact title of the
39 document served and filed in the cause, showing the
40 name and residence or business address of the person



1 making the service, showing that he or she is a resident
2 of or employed in the county where the mailing occurs,
3 that he or she is over the age of 18 years and not a party
4 to the cause, and showing the date and place of deposit
5 in the mail, the name and address of the person served as
6 shown on the envelope, and also showing that the
7 envelope was sealed and deposited in the mail with the
8 postage thereon fully prepaid.

9 (2) A certificate setting forth the exact title of the
10 document served and filed in the cause, showing the
11 name and business address of the person making the
12 service, showing that he or she is an active member of the
13 State Bar of California and is not a party to the cause, and
14 showing the date and place of deposit in the mail, the
15 name and address of the person served as shown on the
16 envelope, and also showing that the envelope was sealed
17 and deposited in the mail with the postage thereon fully
18 prepaid.

19 (3) An affidavit setting forth the exact title of the
20 document served and filed in the cause, showing (A) the
21 name and residence or business address of the person
22 making the service, (B) that he or she is a resident of, or
23 employed in, the county where the mailing occurs, (C)
24 that he or she is over the age of 18 years and not a party
25 to the cause, (D) that he or she is readily familiar with the
26 business' practice for collection and processing of
27 correspondence for mailing with the United States Postal
28 Service, (E) that the correspondence would be deposited
29 with the United States Postal Service that same day in the
30 ordinary course of business, (F) the name and address of
31 the person served as shown on the envelope, and the date
32 and place of business where the correspondence was
33 placed for deposit in the United States Postal Service, and
34 (G) that the envelope was sealed and placed for
35 collection and mailing on that date following ordinary
36 business practices. Service made pursuant to this
37 paragraph, upon motion of a party served, shall be
38 presumed invalid if the postal cancellation date or
39 postage meter date on the envelope is more than one day



1 after the date of deposit for mailing contained in the
2 affidavit.

3 (4) In case of service by the clerk of a court of record,
4 a certificate by that clerk setting forth the exact title of
5 the document served and filed in the cause, showing the
6 name of the clerk and the name of the court of which he
7 or she is the clerk, and that he or she is not a party to the
8 cause, and showing the date and place of deposit in the
9 mail, the name and address of the person served as shown
10 on the envelope, and also showing that the envelope was
11 sealed and deposited in the mail with the postage thereon
12 fully prepaid. *This form of proof is sufficient for service
13 of process in which the clerk or deputy clerk signing the
14 certificate places the document for collection and mailing
15 on the date shown thereon, so as to cause it to be mailed
16 in an envelope so sealed and so addressed on that date
17 following standard court practices. Service made
18 pursuant to this paragraph, upon motion of a party served
19 and a finding of good cause by the court, shall be deemed
20 to have occurred on the date of postage cancellation or
21 postage meter imprint as shown on the envelope if that
22 date is more than one day after the date of deposit for
23 mailing contained in the certificate.*

24 *SEC. 5. Section 1218 of the Code of Civil Procedure is*
25 *amended to read:*

26 1218. (a) Upon the answer and evidence taken, the
27 court or judge—~~must~~ *shall* determine whether the person
28 proceeded against is guilty of the contempt charged, and
29 if it be adjudged that he or she is guilty of the contempt,
30 a fine may be imposed on him or her not exceeding one
31 thousand dollars (\$1,000), or he or she may be imprisoned
32 not exceeding five days, or both. *In addition, a person who
33 is subject to a court order as a party to the action, or any
34 agent of this person, who is adjudged guilty of contempt
35 for violating that court order may be ordered to pay to the
36 party initiating the contempt proceeding the reasonable
37 attorney's fees and costs incurred by this party in
38 connection with the contempt proceeding.*

39 (b) No party, who is in contempt of a court order or
40 judgment in a dissolution of marriage or legal separation

1 action, shall be permitted to enforce such an order or
2 judgment, by way of execution or otherwise, either in the
3 same action or by way of a separate action, against the
4 other party. This restriction shall not affect nor apply to
5 the enforcement of child or spousal support orders.

6 (c) In any court action in which a party is found in
7 contempt of court for failure to comply with a court order
8 pursuant to the Family Code, or Sections 11350 to 11476.1,
9 inclusive, of the Welfare and Institutions Code, the court
10 shall order the following:

11 (1) Upon a first finding of contempt, the court shall
12 order the contemner to perform community service of up
13 to 120 hours, or to be imprisoned up to 120 hours, for each
14 count of contempt.

15 (2) Upon the second finding of contempt, the court
16 shall order the contemner to perform community service
17 of up to 120 hours, in addition to ordering imprisonment
18 of the contemner up to 120 hours, for each count of
19 contempt.

20 (3) Upon the third or any subsequent finding of
21 contempt, the court shall order both of the following:

22 (A) The court shall order the contemner to serve a
23 term of imprisonment of up to 240 hours, and to perform
24 community service of up to 240 hours, for each count of
25 contempt.

26 (B) The court shall order the contemner to pay an
27 administrative fee, not to exceed the actual cost of the
28 contemner’s administration and supervision, while
29 assigned to a community service program pursuant to this
30 paragraph.

31 (4) The court shall take parties’ employment
32 schedules into consideration when ordering either
33 community service or imprisonment, or both.

34 *SEC. 6. Section 2019 of the Code of Civil Procedure is*
35 *amended to read:*

36 2019. (a) Any party may obtain discovery by one or
37 more of the following methods:

- 38 (1) Oral and written depositions.
- 39 (2) Interrogatories to a party.
- 40 (3) Inspections of documents, things, and places.



1 (4) Physical and mental examinations.

2 (5) Requests for admissions.

3 (6) Simultaneous exchanges of expert trial witness
4 information.

5 (b) The court shall restrict the frequency or extent of
6 use of these discovery methods if it determines either of
7 the following:

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

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

16 The court may make these determinations pursuant to
17 a motion for a protective order by a party or other
18 affected person. This motion shall be accompanied by a
19 declaration stating facts showing a good faith attempt at
20 an informal resolution of each issue presented by the
21 motion.

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

28 (c) Unless there is a rule of the Judicial Council, or a
29 local court rule or local uniform written policy to the
30 contrary, the methods of discovery may be used in any
31 sequence, and the fact that a party is conducting
32 discovery, whether by deposition or another method,
33 shall not operate to delay the discovery of any other party.
34 However, on motion and for good cause shown, the court
35 may establish the sequence and timing of discovery for
36 the convenience of parties and witnesses and in the
37 interests of justice.

38 (d) In any action alleging the misappropriation of a
39 trade secret under the Uniform Trade Secrets Act (Title
40 5 (commencing with Section 3426) of Part 1 of Division



1 4 of the Civil Code), before commencing discovery
2 relating to the trade secret, the party alleging the
3 misappropriation shall identify the trade secret with
4 reasonable particularity subject to any orders that may be
5 appropriate under Section 3426.5 of the Civil Code.

6 ~~(e) The provisions of subdivision (a) of Section 1013~~
7 ~~relating to extensions of time where service is made by~~
8 ~~mail shall be applicable to any discovery method of~~
9 *discovery or service of a motion for discovery provided*
10 *for in this article.*

11 *SEC. 7. Section 2025 of the Code of Civil Procedure is*
12 *amended to read:*

13 2025. (a) Any party may obtain discovery within the
14 scope delimited by Section 2017, and subject to the
15 restrictions set forth in Section 2019, by taking in
16 California the oral deposition of any person, including any
17 party to the action. The person deposed may be a natural
18 person, an organization such as a public or private
19 corporation, a partnership, an association, or a
20 governmental agency.

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

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

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

33 (c) A party desiring to take the oral deposition of any
34 person shall give notice in writing in the manner set forth
35 in subdivision (d). However, where under subdivision
36 (d) of Section 2020 only the production by a nonparty of
37 business records for copying is desired, a copy of the
38 deposition subpoena shall serve as the notice of
39 deposition. The notice of deposition shall be given to
40 every other party who has appeared in the action. The



1 deposition notice, or the accompanying proof of service,
2 shall list all the parties or attorneys for parties on whom
3 it is served.

4 Where, as defined in subdivision (a) of Section 1985.3,
5 the party giving notice of the deposition is a subpoenaing
6 party, and the deponent is a witness commanded by a
7 deposition subpoena to produce personal records of a
8 consumer, the subpoenaing party shall serve on that
9 consumer (1) a notice of the deposition, (2) the notice of
10 privacy rights specified in subdivision (e) of Section
11 1985.3, and (3) a copy of the deposition subpoena.

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

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

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

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

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

26 (5) Any intention to record the testimony by
27 audiotape or videotape, in addition to recording the
28 testimony by the stenographic method as required by
29 paragraph (1) of subdivision (l).

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

38 If the deponent named is not a natural person, the
39 deposition notice shall describe with reasonable
40 particularity the matters on which examination is

1 requested. In that event, the deponent shall designate
2 and produce at the deposition those of its officers,
3 directors, managing agents, employees, or agents who are
4 most qualified to testify on its behalf as to those matters
5 to the extent of any information known or reasonably
6 available to the deponent. A deposition subpoena shall
7 advise a nonparty deponent of its duty to make this
8 designation, and shall describe with reasonable
9 particularity the matters on which examination is
10 requested.

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

15 (e) (1) The deposition of a natural person, whether or
16 not a party to the action, shall be taken at a place that is,
17 at the option of the party giving notice of the deposition,
18 either within 75 miles of the deponent's residence, or
19 within the county where the action is pending and within
20 150 miles of the deponent's residence, unless the court
21 orders otherwise under paragraph (3).

22 (2) The deposition of an organization that is a party to
23 the action shall be taken at a place that is, at the option
24 of the party giving notice of the deposition, either within
25 75 miles of the organization's principal executive or
26 business office in California, or within the county where
27 the action is pending and within 150 miles of that office.
28 The deposition of any other organization shall be taken
29 within 75 miles of the organization's principal executive
30 or business office in California, unless the organization
31 consents to a more distant place. If the organization has
32 not designated a principal executive or business office in
33 California, the deposition shall be taken at a place that is,
34 at the option of the party giving notice of the deposition,
35 either within the county where the action is pending, or
36 within 75 miles of any executive or business office in
37 California of the organization.

38 (3) A party desiring to take the deposition of a natural
39 person who is a party to the action or an officer, director,
40 managing agent, or employee of a party may make a



1 motion for an order that the deponent attend for
2 deposition at a place that is more distant than that
3 permitted under paragraph (1). This motion shall be
4 accompanied by a declaration stating facts showing a
5 reasonable and good faith attempt at an informal
6 resolution of any issue presented by the motion.

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

12 (A) Whether the moving party selected the forum.

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

15 (C) The convenience of the deponent.

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

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

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

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

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

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

37 (f) An oral deposition shall be scheduled for a date at
38 least 10 days after service of the deposition notice. If, as
39 defined in subdivision (a) of Section 1985.3, the party
40 giving notice of the deposition is a subpoenaing party, and



1 the deponent is a witness commanded by a deposition
2 subpoena to produce personal records of a consumer, the
3 deposition shall be scheduled for a date at least 20 days
4 after issuance of that subpoena. However, in unlawful
5 detainer actions, an oral deposition shall be scheduled for
6 a date at least five days after service of the deposition
7 notice, but not later than five days before trial.

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

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

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

37 The court shall impose a monetary sanction under
38 Section 2023 against any party, person, or attorney who
39 unsuccessfully makes or opposes a motion to quash a
40 deposition notice, unless it finds that the one subject to



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

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

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

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

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

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

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

30 (3) That a videotape deposition of a treating or
31 consulting physician or of any expert witness, intended
32 for possible use at trial under paragraph (4) of subdivision
33 (u), be postponed until the moving party has had an
34 adequate opportunity to prepare, by discovery
35 deposition of the deponent, or other means, for
36 cross-examination.

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



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

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

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

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

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

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

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

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

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

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

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

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

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

37 (j) (1) If the party giving notice of a deposition fails to
38 attend or proceed with it, the court shall impose a
39 monetary sanction under Section 2023 against that party,
40 or the attorney for that party, or both, and in favor of any



1 party attending in person or by attorney, unless it finds
2 that the one subject to the sanction acted with substantial
3 justification or that other circumstances make the
4 imposition of the sanction unjust.

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

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

20 (3) If, after service of a deposition notice, a party to the
21 action or an officer, director, managing agent, or
22 employee of a party, or a person designated by an
23 organization that is a party under subdivision (d),
24 without having served a valid objection under subdivision
25 (g), fails to appear for examination, or to proceed with it,
26 or to produce for inspection any document or tangible
27 thing described in the deposition notice, the party giving
28 the notice may move for an order compelling the
29 deponent's attendance and testimony, and the
30 production for inspection of any document or tangible
31 thing described in the deposition notice. This motion (A)
32 shall set forth specific facts showing good cause justifying
33 the production for inspection of any document or
34 tangible thing described in the deposition notice, and (B)
35 shall be accompanied by a declaration stating facts
36 showing a reasonable and good faith attempt at an
37 informal resolution of each issue presented by it. If this
38 motion is granted, the court shall also impose a monetary
39 sanction under Section 2023 against the deponent or the
40 party with whom the deponent is affiliated, unless it finds



1 that the one subject to the sanction acted with substantial
2 justification or that other circumstances make the
3 imposition of the sanction unjust. On motion of any other
4 party who, in person or by attorney, attended at the time
5 and place specified in the deposition notice in the
6 expectation that the deponent's testimony would be
7 taken, the court shall also impose a monetary sanction
8 under Section 2023, unless it finds that the one subject to
9 the sanction acted with substantial justification or that
10 other circumstances make the imposition of the sanction
11 unjust.

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

25 (k) Except as provided in paragraph (3) of subdivision
26 (d) of Section 2020, the deposition shall be conducted
27 under the supervision of an officer who is authorized to
28 administer an oath. This officer shall not be financially
29 interested in the action and shall not be a relative or
30 employee of any attorney of any of the parties, or of any
31 of the parties. Any objection to the qualifications of the
32 deposition officer is waived unless made before the
33 deposition begins or as soon thereafter as the ground for
34 that objection becomes known or could be discovered by
35 reasonable diligence.

36 (l) (1) The deposition officer shall put the deponent
37 under oath. Unless the parties agree or the court orders
38 otherwise, the testimony, as well as any stated objections,
39 shall be taken stenographically. The party noticing the
40 deposition may also record the testimony by audiotape or



1 videotape if the notice of deposition stated an intention
2 also to record the testimony by either of those methods,
3 or if all the parties agree that the testimony may also be
4 recorded by either of those methods. Any other party, at
5 that party's expense, may make a simultaneous audiotape
6 or videotape record of the deposition, provided that other
7 party promptly, and in no event less than three calendar
8 days before the date for which the deposition is
9 scheduled, serves a written notice of this intention to
10 audiotape or videotape the deposition testimony on the
11 party or attorney who noticed the deposition, on all other
12 parties or attorneys on whom the deposition notice was
13 served under subdivision (c), and on any deponent whose
14 attendance is being compelled by a deposition subpoena
15 under Section 2020. If this notice is given three calendar
16 days before the deposition date, it shall be made by
17 personal service under Section 1011. Examination and
18 cross-examination of the deponent shall proceed as
19 permitted at trial under the provisions of the Evidence
20 Code.

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

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

27 (B) The operator of the recording equipment shall be
28 competent to set up, operate, and monitor the equipment
29 in the manner prescribed in this subdivision. The
30 operator may be an employee of the attorney taking the
31 deposition unless the operator is also the deposition
32 officer. However, if a videotape of deposition testimony
33 is to be used under paragraph (4) of subdivision (u), the
34 operator of the recording equipment shall be a person
35 who is authorized to administer an oath, and shall not be
36 financially interested in the action or be a relative or
37 employee of any attorney of any of the parties, unless all
38 parties attending the deposition agree on the record to
39 waive these qualifications and restrictions.



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

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

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

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

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

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

26 (I) A party intending to offer an audiotaped or
27 videotaped recording of a deposition in evidence under
28 subdivision (u) shall notify the court and all parties in
29 writing of that intent and of the parts of the deposition to
30 be offered within sufficient time for objections to be
31 made and ruled on by the judge to whom the case is
32 assigned for trial or hearing, and for any editing of the
33 tape. Objections to all or part of the deposition shall be
34 made in writing. The court may permit further
35 designations of testimony and objections as justice may
36 require. With respect to those portions of an audiotaped
37 or videotaped deposition that are not designated by any
38 party or that are ruled to be objectionable, the court may
39 order that the party offering the recording of the
40 deposition at the trial or hearing suppress those portions,



1 or that an edited version of the deposition tape be
2 prepared for use at the trial or hearing. The original
3 audiotape or videotape of the deposition shall be
4 preserved unaltered. If no stenographic record of the
5 deposition testimony has previously been made, the party
6 offering a videotape or an audiotape recording of that
7 testimony under subdivision (u) shall accompany that
8 offer with a stenographic transcript prepared from that
9 recording.

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

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

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

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

39 (4) If a deponent fails to answer any question or to
40 produce any document or tangible thing under the



1 deponent’s control that is specified in the deposition
 2 notice or a deposition subpoena, the party seeking that
 3 answer or production may adjourn the deposition or
 4 complete the examination on other matters without
 5 waiving the right at a later time to move for an order
 6 compelling that answer or production under subdivision
 7 (o).

8 (n) On demand of any party or the deponent, the
 9 deposition officer shall suspend the taking of testimony to
 10 enable that party or deponent to move for a protective
 11 order on the ground that the examination is being
 12 conducted in bad faith or in a manner that unreasonably
 13 annoys, embarrasses, or oppresses that deponent or party.
 14 This motion shall be accompanied by a declaration stating
 15 facts showing a reasonable and good faith attempt at an
 16 informal resolution of each issue presented by the motion.
 17 The court, for good cause shown, may terminate the
 18 examination or may limit the scope and manner of taking
 19 the deposition as provided in subdivision (i). If the order
 20 terminates the examination, the deposition shall not
 21 thereafter be resumed, except on order of the court.

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

28 (o) If a deponent fails to answer any question or to
 29 produce any document or tangible thing under the
 30 deponent’s control that is specified in the deposition
 31 notice or a deposition subpoena, the party seeking
 32 discovery may move the court for an order compelling
 33 that answer or production. This motion shall be made no
 34 later than 60 days after the completion of the record of the
 35 deposition, and shall be accompanied by a declaration
 36 stating facts showing a reasonable and good faith attempt
 37 at an informal resolution of each issue presented by the
 38 motion. Notice of this motion shall be given to all parties,
 39 and to the deponent either orally at the examination, or
 40 by subsequent service in writing. If the notice of the



1 motion is given orally, the deposition officer shall direct
2 the deponent to attend a session of the court at the time
3 specified in the notice. Not less than five days prior to the
4 hearing on this motion, the moving party shall lodge with
5 the court a certified copy of any parts of the stenographic
6 transcript of the deposition that are relevant to the
7 motion. If a deposition is recorded by audiotape or
8 videotape, the moving party is required to lodge a
9 certified copy of a transcript of any parts of the deposition
10 that are relevant to the motion. If the court determines
11 that the answer or production sought is subject to
12 discovery, it shall order that the answer be given or the
13 production be made on the resumption of the deposition.

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

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

34 (p) Unless the parties agree otherwise, the testimony
35 at any deposition recorded by stenographic means shall
36 be transcribed. The party noticing the deposition shall
37 bear the cost of that transcription, unless the court, on
38 motion and for good cause shown, orders that the cost be
39 borne or shared by another party. Any other party, at that
40 party's expense, may obtain a copy of the transcript.



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

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

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



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

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

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

36 (2) If there is no stenographic transcription of the
37 deposition, the deposition officer shall send written
38 notice to the deponent and to all parties attending the
39 deposition that the recording is available for review,
40 unless the deponent and all these parties agree on the



1 record to waive the hearing or viewing of an audiotape
2 or videotape recording of the testimony. For 30 days
3 following this notice the deponent, either in person or by
4 signed letter to the deposition officer, may change the
5 substance of the answer to any question.

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

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

29 (r) The deposition officer shall certify on the
30 transcript of the deposition, or in the writing
31 accompanying an audiotaped or videotaped deposition as
32 described in paragraph (2) of subdivision (q), that the
33 deponent was duly sworn and that the transcript or
34 recording is a true record of the testimony given and of
35 any changes made by the deponent.

36 (s) (1) The certified transcript of a deposition shall
37 not be filed with the court. Instead, the deposition officer
38 shall securely seal that transcript in an envelope or
39 package endorsed with the title of the action and marked:
40 "Deposition of (here insert name of deponent)," and



1 shall promptly transmit it to the attorney for the party
2 who noticed the deposition. This attorney shall store it
3 under conditions that will protect it against loss,
4 destruction, or tampering.

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

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

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

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

37 (t) Once any party has taken the deposition of any
38 natural person, including that of a party to the action,
39 neither the party who gave, nor any other party who has
40 been served with a deposition notice pursuant to



1 subdivision (c) may take a subsequent deposition of that
2 deponent. However, for good cause shown, the court may
3 grant leave to take a subsequent deposition, and the
4 parties, with the consent of any deponent who is not a
5 party, may stipulate that a subsequent deposition be
6 taken. This subdivision does not preclude taking one
7 subsequent deposition of a natural person who has
8 previously been examined (1) as a result of that person's
9 designation to testify on behalf of an organization under
10 subdivision (d), or (2) *for the limited purpose of*
11 *discovering pursuant to Section 485.230 the identify,*
12 *location, and value of property in which the deponent has*
13 *an interest.*

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

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

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

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

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



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

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

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

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

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

34 (7) When an action has been brought in any court of
35 the United States or of any state, and another action
36 involving the same subject matter is subsequently
37 brought between the same parties or their
38 representatives or successors in interest, all depositions
39 lawfully taken and duly filed in the initial action may be
40 used in the subsequent action as if originally taken in that



1 subsequent action. A deposition previously taken may
2 also be used as permitted by the Evidence Code.

O

