

AMENDED IN ASSEMBLY JANUARY 15, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 421

Introduced by Assembly Member Wayne

February 20, 2001

~~An act relating to dispute resolution. An act to amend Section 2025 of the Code of Civil Procedure, relating to discovery.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 421, as amended, Wayne. ~~Dispute resolution: automobile claims~~ *Depositions: recording.*

Under existing law, the operator of recording equipment used to audiotape or videotape a deposition must be competent to set up, operate, and monitor the equipment, as specified, and may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a videotape of the deposition testimony is to be used for specified purposes regarding the testimony of an expert witness who is available to testify at trial, the operator of the recording equipment must be a person who is authorized to administer an oath, and may not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions.

This bill would instead provide that the operator of the recording equipment must be competent to setup, operate, and monitor the equipment, and may be an employee or independent contractor of the attorney taking the deposition, as specified. The bill would also require the attorney who selects the operator of the recording equipment to

make a copy of the audiotape or videotape at the actual and reasonable cost of reproduction for all parties that request and pay for a copy. This bill would also make related, conforming changes.

~~Existing law provides a comprehensive system for the conduct of arbitration proceedings and the enforcement of arbitration agreements and awards. Existing law provides for mandatory civil action mediation of specified actions in the courts of Los Angeles County and for the courts of other counties at their option.~~

~~This bill would make a statement regarding the intent of the Legislature to enact legislation to provide for a fair and expeditious process for the resolution of automobile claims under \$15,000.~~

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. It is the intent of the Legislature to enact~~
2 ~~legislation to provide for a fair and expeditious process for the~~
3 ~~resolution of automobile claims under fifteen thousand dollars~~
4 ~~(\$15,000).~~

5 *SECTION 1. Section 2025 of the Code of Civil Procedure is*
6 *amended to read:*

7 2025. (a) Any party may obtain discovery within the scope
8 delimited by Section 2017, and subject to the restrictions set forth
9 in Section 2019, by taking in California the oral deposition of any
10 person, including any party to the action. The person deposed may
11 be a natural person, an organization such as a public or private
12 corporation, a partnership, an association, or a governmental
13 agency.

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

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

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



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

10 Where, as defined in subdivision (a) of Section 1985.3, the party
11 giving notice of the deposition is a subpoenaing party, and the
12 deponent is a witness commanded by a deposition subpoena to
13 produce personal records of a consumer, the subpoenaing party
14 shall serve on that consumer (1) a notice of the deposition, (2) the
15 notice of privacy rights specified in subdivision (e) of Section
16 1985.3 and in Section 1985.6, and (3) a copy of the deposition
17 subpoena.

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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

17 (C) The convenience of the deponent.

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

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

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

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

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

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

36 (f) An oral deposition shall be scheduled for a date at least 10
37 days after service of the deposition notice. If, as defined in
38 subdivision (a) of Section 1985.3, the party giving notice of the
39 deposition is a subpoenaing party, and the deponent is a witness
40 commanded by a deposition subpoena to produce personal records



1 of a consumer, the deposition shall be scheduled for a date at least
2 20 days after issuance of that subpoena. However, in unlawful
3 detainer actions, an oral deposition shall be scheduled for a date at
4 least five days after service of the deposition notice, but not later
5 than five days before trial.

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

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

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

32 The court shall impose a monetary sanction under Section 2023
33 against any party, person, or attorney who unsuccessfully makes
34 or opposes a motion to quash a deposition notice, unless it finds
35 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 (h) (1) The service of a deposition notice under subdivision (c)
39 is effective to require any deponent who is a party to the action or
40 an officer, director, managing agent, or employee of a party to



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

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

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

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

22 The court, for good cause shown, may make any order that
23 justice requires to protect any party, deponent, or other natural
24 person or organization from unwarranted annoyance,
25 embarrassment, or oppression, or undue burden and expense. This
26 protective order may include, but is not limited to, one or more of
27 the following 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 consulting
31 physician or of any expert witness, intended for possible use at trial
32 under paragraph (4) of subdivision (u), be postponed until the
33 moving party has had an adequate opportunity to prepare, by
34 discovery deposition of the deponent, or other means, for
35 cross-examination.

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

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



- 1 (6) That the deponent’s testimony be taken by written, instead
2 of oral, examination.
- 3 (7) That the method of discovery be interrogatories to a party
4 instead of an oral deposition.
- 5 (8) That the testimony be recorded in a manner different from
6 that specified in the deposition notice.
- 7 (9) That certain matters not be inquired into.
- 8 (10) That the scope of the examination be limited to certain
9 matters.
- 10 (11) That all or certain of the writings or tangible things
11 designated in the deposition notice not be produced, inspected, or
12 copied.
- 13 (12) That designated persons, other than the parties to the
14 action and their officers and counsel, be excluded from attending
15 the deposition.
- 16 (13) That a trade secret or other confidential research,
17 development, or commercial information not be disclosed or be
18 disclosed only to specified persons or only in a specified way.
- 19 (14) That the parties simultaneously file specified documents
20 enclosed in sealed envelopes to be opened as directed by the court.
- 21 (15) That the deposition be sealed and thereafter opened only
22 on order of the court.
- 23 If the motion for a protective order is denied in whole or in part,
24 the court may order that the deponent provide or permit the
25 discovery against which protection was sought on those terms and
26 conditions that are just.
- 27 The court shall impose a monetary sanction under Section 2023
28 against any party, person, or attorney who unsuccessfully makes
29 or opposes a motion for a protective order, unless it finds that the
30 one subject to the sanction acted with substantial justification or
31 that other circumstances make the imposition of the sanction
32 unjust.
- 33 (j) (1) If the party giving notice of a deposition fails to attend
34 or proceed with it, the court shall impose a monetary sanction
35 under Section 2023 against that party, or the attorney for that party,
36 or both, and in favor of any party attending in person or by
37 attorney, unless it finds that the one subject to the sanction acted
38 with substantial justification or that other circumstances make the
39 imposition of the sanction unjust.



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

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

15 (3) If, after service of a deposition notice, a party to the action
16 or an officer, director, managing agent, or employee of a party, or
17 a person designated by an organization that is a party under
18 subdivision (d), without having served a valid objection under
19 subdivision (g), fails to appear for examination, or to proceed with
20 it, or to produce for inspection any document or tangible thing
21 described in the deposition notice, the party giving the notice may
22 move for an order compelling the deponent's attendance and
23 testimony, and the production for inspection of any document or
24 tangible thing described in the deposition notice. This motion (A)
25 shall set forth specific facts showing good cause justifying the
26 production for inspection of any document or tangible thing
27 described in the deposition notice, and (B) shall be accompanied
28 by a declaration stating facts showing a reasonable and good faith
29 attempt at an informal resolution of each issue presented by it or,
30 when the deponent fails to attend the deposition and produce the
31 documents or things described in the deposition notice, by a
32 declaration stating that the petitioner has contacted the deponent
33 to inquire about the nonappearance. If this motion is granted, the
34 court shall also impose a monetary sanction under Section 2023
35 against the deponent or the party with whom the deponent is
36 affiliated, unless it finds that the one subject to the sanction acted
37 with substantial justification or that other circumstances make the
38 imposition of the sanction unjust. On motion of any other party
39 who, in person or by attorney, attended at the time and place
40 specified in the deposition notice in the expectation that the



1 deponent’s testimony would be taken, the court shall also impose
2 a monetary sanction under Section 2023, unless it finds that the one
3 subject to the sanction acted with substantial justification or that
4 other circumstances make the imposition of the sanction unjust.

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

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

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

23 (2) Services and products offered or provided by the deposition
24 officer or the entity providing the services of the deposition officer
25 to any party or to any party’s attorney or third party who is
26 financing all or part of the action shall be offered to all parties or
27 their attorneys attending the deposition. No service or product may
28 be offered or provided by the deposition officer or by the entity
29 providing the services of the deposition officer to any party or any
30 party’s attorney or third party who is financing all or part of the
31 action unless the service or product is offered or provided to all
32 parties or their attorneys attending the deposition. All services and
33 products offered or provided shall be made available at the same
34 time to all parties or their attorneys.

35 (3) The deposition officer or the entity providing the services
36 of the deposition officer shall not provide to any party or any
37 party’s attorney or third party who is financing all or part of the
38 action any service or product consisting of the deposition officer’s
39 notations or comments regarding the demeanor of any witness,
40 attorney, or party present at the deposition. The deposition officer



1 or entity providing the services of the deposition officer shall not
2 collect any personal identifying information about the witness as
3 a service or product to be provided to any party or third party who
4 is financing all or part of the action.

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

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

18 (l) (1) The deposition officer shall put the deponent under
19 oath. Unless the parties agree or the court orders otherwise, the
20 testimony, as well as any stated objections, shall be taken
21 stenographically. The party noticing the deposition may also
22 record the testimony by audiotape or videotape if the notice of
23 deposition stated an intention also to record the testimony by either
24 of those methods, or if all the parties agree that the testimony may
25 also be recorded by either of those methods. Any other party, at
26 that party's expense, may make a simultaneous audiotape or
27 videotape record of the deposition, provided that other party
28 promptly, and in no event less than three calendar days before the
29 date for which the deposition is scheduled, serves a written notice
30 of this intention to audiotape or videotape the deposition testimony
31 on the party or attorney who noticed the deposition, on all other
32 parties or attorneys on whom the deposition notice was served
33 under subdivision (c), and on any deponent whose attendance is
34 being compelled by a deposition subpoena under Section 2020. If
35 this notice is given three calendar days before the deposition date,
36 it shall be made by personal service under Section 1011.
37 Examination and cross-examination of the deponent shall proceed
38 as permitted at trial under the provisions of the Evidence Code.

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



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

3 (B) The operator of the recording equipment shall be
4 competent to set up, operate, and monitor the equipment in the
5 manner prescribed in this subdivision. The operator may be an
6 employee *or independent contractor* of the attorney taking the
7 deposition unless the operator is also the deposition officer.
8 ~~However, if a videotape of deposition testimony is to be used under~~
9 ~~paragraph (4) of subdivision (u), the operator of the recording~~
10 ~~equipment shall be a person who is authorized to administer an~~
11 ~~oath, and shall not be financially interested in the action or be a~~
12 ~~relative or employee of any attorney of any of the parties, unless~~
13 ~~all parties attending the deposition agree on the record to waive~~
14 ~~these qualifications and restrictions.~~ *The attorney who selects the*
15 *operator of the recording equipment shall make a copy of the*
16 *audiotape or videotape at the actual and reasonable cost of*
17 *reproduction for all parties that request and pay for a copy.*
18 Services and products offered or provided by the deposition officer
19 or the entity providing the services of the deposition officer to any
20 party or to any party's attorney or third party who is financing all
21 or part of the action shall be offered or provided to all parties or
22 their attorneys attending the deposition. No service or product may
23 be offered or provided by the deposition officer or by the entity
24 providing the services of the deposition officer to any party or any
25 party's attorney or third party who is financing all or part of the
26 action unless the service or product is offered or provided to all
27 parties or their attorneys attending the deposition. All services and
28 products offered or provided shall be made available at the same
29 time to all parties or their attorneys. The deposition officer or the
30 entity providing the services of the deposition officer shall not
31 provide to any party or any other person or entity any service or
32 product consisting of the deposition officer's notations or
33 comments regarding the demeanor of any witness, attorney, or
34 party present at the deposition. The deposition officer or the entity
35 providing the services of the deposition officer shall not collect
36 any personal identifying information about the witness as a service
37 or product to be provided to any party or third party who is
38 financing all or part of the action. Upon the request of any party
39 or any party's attorney attending a deposition, any party or any
40 party's attorney attending the deposition shall enter in the record



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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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



1 deposition that are relevant to the motion. If the court determines
2 that the answer or production sought is subject to discovery, it shall
3 order that the answer be given or the production be made on the
4 resumption of the deposition.

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

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

22 (p) Unless the parties agree otherwise, the testimony at any
23 deposition recorded by stenographic means shall be transcribed.
24 The party noticing the deposition shall bear the cost of that
25 transcription, unless the court, on motion and for good cause
26 shown, orders that the cost be borne or shared by another party.
27 Notwithstanding paragraph (2) of subdivision (k), any other party,
28 at that party's expense, may obtain a copy of the transcript. If the
29 deposition officer receives a request from a party for an original
30 or a copy of the deposition transcript, or any portion thereof, and
31 the document will be available to that party prior to the time the
32 original or copy would be available to any other party, the
33 deposition officer shall immediately notify all other parties
34 attending the deposition of the request, and shall, upon request by
35 any party other than the party making the original request, make
36 that copy of the full or partial deposition transcript available to all
37 parties at the same time. Stenographic notes of depositions shall
38 be retained by the reporter for a period of not less than eight years
39 from the date of the deposition, where no transcript is produced,
40 and not less than one year from the date on which the transcript is



1 produced. Those notes may be either on paper or electronic media,
2 as long as it allows for satisfactory production of a transcript at any
3 time during the periods specified. At the request of any other party
4 to the action, including a party who did not attend the taking of the
5 deposition testimony, any party who records or causes the
6 recording of that testimony by means of audiotape or videotape
7 shall promptly (1) permit that other party to hear the audiotape or
8 to view the videotape, and (2) furnish a copy of the audiotape or
9 videotape to that other party on receipt of payment of the
10 reasonable cost of making that copy of the tape.

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

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

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



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

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

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

33 The deposition officer shall set forth in a writing to accompany
34 the recording any changes made by the deponent, as well as either
35 the deponent's signature identifying the deposition as his or her
36 own, or a statement of the deponent's failure to supply the
37 signature, or to contact the officer within the allotted period. When
38 a deponent fails to contact the officer within the allotted period, or
39 expressly refuses by a signature to identify the deposition as his or
40 her own, the deposition shall be given the same effect as though



1 signed. However, on a reasonable motion to suppress the
2 deposition, accompanied by a declaration stating facts showing a
3 reasonable and good faith attempt at an informal resolution of each
4 issue presented by the motion, the court may determine that the
5 reasons given for the refusal to sign require rejection of the
6 deposition in whole or in part.

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

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

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

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

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

39 (2) An audiotape or videotape record of deposition testimony,
40 including a certified tape made by an operator qualified under



1 subparagraph (B) of paragraph (2) of subdivision (l), shall not be
2 filed with the court. Instead, the operator shall retain custody of
3 that record and shall store it under conditions that will protect it
4 against loss, destruction, or tampering, and preserve as far as
5 practicable the quality of the tape and the integrity of the testimony
6 and images it contains.

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

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

21 (t) Once any party has taken the deposition of any natural
22 person, including that of a party to the action, neither the party who
23 gave, nor any other party who has been served with a deposition
24 notice pursuant to subdivision (c) may take a subsequent
25 deposition of that deponent. However, for good cause shown, the
26 court may grant leave to take a subsequent deposition, and the
27 parties, with the consent of any deponent who is not a party, may
28 stipulate that a subsequent deposition be taken. This subdivision
29 does not preclude taking one subsequent deposition of a natural
30 person who has previously been examined (1) as a result of that
31 person's designation to testify on behalf of an organization under
32 subdivision (d), or (2), pursuant to a court order under Section
33 485.230, for the limited purpose of discovering pursuant to
34 Section 485.230 the identity, location, and value of property in
35 which the deponent has an interest. This subdivision does not
36 authorize the taking of more than one subsequent deposition for
37 the limited purpose of Section 485.230.

38 (u) At the trial or any other hearing in the action, any part or all
39 of a deposition may be used against any party who was present or
40 represented at the taking of the deposition, or who had due notice



1 of the deposition and did not serve a valid objection under
2 subdivision (g), so far as admissible under the rules of evidence
3 applied as though the deponent were then present and testifying as
4 a witness, in accordance with the following provisions:

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

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

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

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

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

32 (C) 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 (4) Any party may use a videotape deposition of a treating or
37 consulting physician or of any expert witness even though the
38 deponent is available to testify if the deposition notice under
39 subdivision (d) reserved the right to use the deposition at trial, ~~and~~



1 ~~if that party has complied with subparagraph (I) of paragraph (2)~~
2 ~~of subdivision (l).~~

3 (5) Subject to the requirements of this section, 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 (6) Substitution of parties does not affect the right to use
8 depositions previously taken.

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

