

AMENDED IN SENATE AUGUST 5, 2002
AMENDED IN ASSEMBLY JANUARY 28, 2002
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 to amend Section 2025 of the Code of Civil Procedure, relating to discovery.

LEGISLATIVE COUNSEL'S DIGEST

AB 421, as amended, Wayne. 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 set up, operate, and monitor the equipment, and may be ~~an employee or independent contractor~~ *the*

attorney or an independent contractor or an employee 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 available a copy of the audiotape or videotape at the actual and reasonable cost of reproduction for all parties that request and pay for a to any party upon request and payment by that party of the cost of reproduction of that copy.

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 2025 of the Code of Civil Procedure is
2 amended to read:

3 2025. (a) Any party may obtain discovery within the scope
4 delimited by Section 2017, and subject to the restrictions set forth
5 in Section 2019, by taking in California the oral deposition of any
6 person, including any party to the action. The person deposed may
7 be a natural person, an organization such as a public or private
8 corporation, a partnership, an association, or a governmental
9 agency.

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

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

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

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



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

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

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

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

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

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

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

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

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall

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

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

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

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

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

39 In exercising its discretion to grant or deny this motion, the court
40 shall take into consideration any factor tending to show whether

1 the interests of justice will be served by requiring the deponent's
2 attendance at that more distant place, including, but not limited to,
3 the following:

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

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

7 (C) The convenience of the deponent.

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

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

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

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

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

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

26 (f) An oral deposition shall be scheduled for a date at least 10
27 days after service of the deposition notice. If, as defined in
28 subdivision (a) of Section 1985.3, the party giving notice of the
29 deposition is a subpoenaing party, and the deponent is a witness
30 commanded by a deposition subpoena to produce personal records
31 of a consumer, the deposition shall be scheduled for a date at least
32 20 days after issuance of that subpoena. However, in unlawful
33 detainer actions, an oral deposition shall be scheduled for a date at
34 least five days after service of the deposition notice, but not later
35 than five days before trial.

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

1 (g) Any party served with a deposition notice that does not
2 comply with subdivisions (b) to (f), inclusive, waives any error or
3 irregularity unless that party promptly serves a written objection
4 specifying that error or irregularity at least three calendar days
5 prior to the date for which the deposition is scheduled, on the party
6 seeking to take the deposition and any other attorney or party on
7 whom the deposition notice was served. If an objection is made
8 three calendar days before the deposition date, the objecting party
9 shall make personal service of that objection pursuant to Section
10 1011 on the party who gave notice of the deposition. Any
11 deposition taken after the service of a written objection shall not
12 be used against the objecting party under subdivision (u) if the
13 party did not attend the deposition and if the court determines that
14 the objection was a valid one.

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

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

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

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

37 (3) A person may take, and any person other than the deponent
38 may attend, a deposition by telephone or other remote electronic
39 means. The court may expressly provide that a nonparty deponent
40 may appear at his or her deposition by telephone if it finds there



1 is good cause and no prejudice to any party. A party deponent must
2 appear at his or her deposition in person and be in the presence of
3 the deposition officer. The procedures to implement this section
4 shall be established by court order in the specific action proceeding
5 or by the California Rules of Court.

6 (i) Before, during, or after a deposition, any party, any
7 deponent, or any other affected natural person or organization may
8 promptly move for a protective order. The 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.

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

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

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

20 (3) That a videotape deposition of a treating or consulting
21 physician or of any expert witness, intended for possible use at trial
22 under paragraph (4) of subdivision (u), be postponed until the
23 moving party has had an adequate opportunity to prepare, by
24 discovery deposition of the deponent, or other means, for
25 cross-examination.

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

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

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

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

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

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

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

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

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

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

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

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

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

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 for a protective order, unless it finds that the
21 one subject to the sanction acted with substantial justification or
22 that other circumstances make the imposition of the sanction
23 unjust.

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

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



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

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

35 If that party or party-affiliated deponent then fails to obey an
36 order compelling attendance, testimony, and production, the court
37 may make those orders that are just, including the imposition of an
38 issue sanction, an evidence sanction, or a terminating sanction
39 under Section 2023 against that party deponent or against the party
40 with whom the deponent is affiliated. In lieu of, or in addition to,

1 this sanction, the court may impose a monetary sanction under
2 Section 2023 against that deponent or against the party with whom
3 that party deponent is affiliated, and in favor of any party who, in
4 person or by attorney, attended in the expectation that the
5 deponent's testimony would be taken pursuant to that order.

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

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

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

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

35 (4) Upon the request of any party or any party's attorney
36 attending a deposition, any party or any party's attorney attending
37 the deposition shall enter in the record of the deposition all services
38 and products made available to that party or party's attorney or
39 third party who is financing all or part of the action by the
40 deposition officer or by the entity providing the services of the

deposition officer. A party in the action who is not represented by an attorney shall be informed by the noticing party or the party's attorney that the unrepresented party may request this statement.

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

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

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

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

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. ~~The operator may be an employee or independent contractor of the attorney taking the deposition unless the operator is also the deposition officer. The attorney who selects the operator of the recording equipment shall make a copy of the audiotape or videotape at the actual and reasonable cost of reproduction for all parties that request and pay~~

1 ~~for a~~—The operator may be the attorney or an independent
2 contractor or an employee of the attorney taking the deposition,
3 but no employee may also be the deposition officer. The attorney
4 who selects the operator of the recording equipment shall make
5 available a copy of the audiotape or videotape to any party upon
6 request and upon payment by that party of the cost of reproduction
7 of that copy. Services and products offered or provided by the
8 deposition officer or the entity providing the services of the
9 deposition officer to any party or to any party's attorney or third
10 party who is financing all or part of the action shall be offered or
11 provided to all parties or their attorneys attending the deposition.
12 No service or product may be offered or provided by the deposition
13 officer or by the entity providing the services of the deposition
14 officer to any party or any party's attorney or third party who is
15 financing all or part of the action unless the service or product is
16 offered or provided to all parties or their attorneys attending the
17 deposition. All services and products offered or provided shall be
18 made available at the same time to all parties or their attorneys. The
19 deposition officer or the entity providing the services of the
20 deposition officer shall not provide to any party or any other
21 person or entity any service or product consisting of the deposition
22 officer's notations or comments regarding the demeanor of any
23 witness, attorney, or party present at the deposition. The deposition
24 officer or the entity providing the services of the deposition officer
25 shall not collect any personal identifying information about the
26 witness as a service or product to be provided to any party or third
27 party who is financing all or part of the action. Upon the request
28 of any party or any party's attorney attending a deposition, any
29 party or any party's attorney attending the deposition shall enter
30 in the record of the deposition all services and products made
31 available to that party or party's attorney or third party who is
32 financing all or part of the action by the deposition officer or by
33 the entity providing the services of the deposition officer. A party
34 in the action who is not represented by an attorney shall be
35 informed by the noticing party that the unrepresented party may
36 request this statement.

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

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

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

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

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

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

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

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

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

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

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

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

(n) The deposition officer shall not suspend the taking of testimony without stipulation of the party conducting the deposition and the deponent unless any party attending the deposition or the deponent demands the taking of testimony be suspended to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable

1 and good faith attempt at an informal resolution of each issue
2 presented by the motion. The court, for good cause shown, may
3 terminate the examination or may limit the scope and manner of
4 taking the deposition as provided in subdivision (i). If the order
5 terminates the examination, the deposition shall not thereafter be
6 resumed, except on order of the court.

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

36 The court shall impose a monetary sanction under Section 2023
37 against any party, person, or attorney who unsuccessfully makes
38 or opposes a motion to compel answer or production, unless it
39 finds that the one subject to the sanction acted with substantial



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

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

14 (p) Unless the parties agree otherwise, the testimony at any
15 deposition recorded by stenographic means shall be transcribed.
16 The party noticing the deposition shall bear the cost of that
17 transcription, unless the court, on motion and for good cause
18 shown, orders that the cost be borne or shared by another party.
19 Notwithstanding paragraph (2) of subdivision (k), any other party,
20 at that party's expense, may obtain a copy of the transcript. If the
21 deposition officer receives a request from a party for an original
22 or a copy of the deposition transcript, or any portion thereof, and
23 the document will be available to that party prior to the time the
24 original or copy would be available to any other party, the
25 deposition officer shall immediately notify all other parties
26 attending the deposition of the request, and shall, upon request by
27 any party other than the party making the original request, make
28 that copy of the full or partial deposition transcript available to all
29 parties at the same time. Stenographic notes of depositions shall
30 be retained by the reporter for a period of not less than eight years
31 from the date of the deposition, where no transcript is produced,
32 and not less than one year from the date on which the transcript is
33 produced. Those notes may be either on paper or electronic media,
34 as long as it allows for satisfactory production of a transcript at any
35 time during the periods specified. At the request of any other party
36 to the action, including a party who did not attend the taking of the
37 deposition testimony, any party who records or causes the
38 recording of that testimony by means of audiotape or videotape
39 shall promptly (1) permit that other party to hear the audiotape or
40 to view the videotape, and (2) furnish a copy of the audiotape or



1 videotape to that other party on receipt of payment of the
2 reasonable cost of making that copy of the tape.

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

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

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

32 The deposition officer shall indicate on the original of the
33 transcript, if the deponent has not already done so at the office of
34 the deposition officer, any action taken by the deponent and
35 indicate on the original of the transcript, the deponent's approval
36 of, or failure or refusal to approve, the transcript. The deposition
37 officer shall also notify in writing the parties attending the
38 deposition of any changes which the deponent timely made in
39 person. If the deponent fails or refuses to approve the transcript
40 within the allotted period, the deposition shall be given the same

1 effect as though it had been approved, subject to any changes
2 timely made by the deponent. However, on a seasonable motion
3 to suppress the deposition, accompanied by a declaration stating
4 facts showing a reasonable and good faith attempt at an informal
5 resolution of each issue presented by the motion, the court may
6 determine that the reasons given for the failure or refusal to
7 approve the transcript require rejection of the deposition in whole
8 or in part.

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

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

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

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



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

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

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

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

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

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

38 At the request of any party to the action, including a party who
39 did not attend the taking of the deposition testimony, or at the
40 request of the deponent, that operator shall promptly (A) permit

1 the one making the request to hear or to view the tape on receipt
2 of payment of a reasonable charge for providing the facilities for
3 hearing or viewing the tape, and (B) furnish a copy of the audiotape
4 or the videotape recording to the one making the request on receipt
5 of payment of the reasonable cost of making that copy of the tape.

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

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

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

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

39 (2) An adverse party may use for any purpose, a deposition of
40 a party to the action, or of anyone who at the time of taking the

1 deposition was an officer, director, managing agent, employee,
2 agent, or designee under subdivision (d) of a party. It is not ground
3 for objection to the use of a deposition of a party under this
4 paragraph by an adverse party that the deponent is available to
5 testify, has testified, or will testify at the trial or other hearing.

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

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

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

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

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

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

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

39 (7) When an action has been brought in any court of the United
40 States or of any state, and another action involving the same

1 subject matter is subsequently brought between the same parties
2 or their representatives or successors in interest, all depositions
3 lawfully taken and duly filed in the initial action may be used in
4 the subsequent action as if originally taken in that subsequent
5 action. A deposition previously taken may also be used as
6 permitted by the Evidence Code.

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

