

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Douglas M. Perluss, Chair
Anne M. Ronan, Attorney, Committee Counsel, 415-865-8933
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DATE: September 3, 2009

SUBJECT: Civil Discovery: Subpoenas in Actions Pending Outside California
(adopt forms SUBP-030, SUBP-035, SUBP-040, SUBP-045, and
SUBP-050) (Action Required)

Issue Statement

The Legislature passed the Interstate and International Depositions and Discovery Act (Assem. Bill 2193 [Tran]; Stats. 2008, ch. 231) (the act) in 2008. This proposal implements the Act's mandate that the Judicial Council develop forms to be used in applying for and issuing subpoenas for California discovery in out-of-state actions.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council adopt the following as mandatory forms, effective January 1, 2010:

1. *Application for Discovery Subpoena in Action Pending Outside California* (form SUBP-030);
2. *Subpoena for Production of Business Records in Action Pending Outside California* (form SUBP-035);
3. *Deposition Subpoena for Personal Appearance in Action Pending Outside California* (form SUBP-040);
4. *Deposition Subpoena for Personal Appearance and Production of Documents and Things in Action Pending Outside California* (form SUBP-045);

5. *Subpoena for Inspection of Premises in Action Pending Outside California*
(form SUBP-050).

The text of the proposed forms is attached at page 8 - 16.

Rationale for Recommendation

Assembly Bill 2193, the Interstate and International Depositions and Discovery Act, replaces the prior statute that authorized issuance of California deposition subpoenas in actions pending outside the state, former Code of Civil Procedure section 2029.010.¹ The act clarifies the deponents for whom California subpoenas can be issued and provides processes for obtaining subpoenas and for the resolution of disputes regarding discovery in actions pending outside the state.

The act simplifies the procedure for obtaining a subpoena by permitting issuance of a California subpoena to be based on *any* documents from an out-of-state court that command a person in California to testify or provide other discovery (and defines such a document, for the purpose of the act, as a “foreign” subpoena). (§§ 2029.200(e), 2029.300.) The out-of-state party can obtain a California subpoena in two ways: (1) from a court, by presenting the foreign subpoena or a copy of it to the clerk of the superior court in the county in which the discovery is to take place, along with an application form and the prescribed fee (§ 2029.300 (a), (b));² or (2) from retained California counsel, by presenting the foreign subpoena to the attorney, who may issue a California subpoena with identical terms (§ 2029.350(a)). Under either procedure, the subpoenas are to be issued on Judicial Council forms, with terms identical to those in the foreign subpoena. (§§ 2029.300(d), 2029.350(b).)

Application form

The proposed *Application for Discovery Subpoena in Action Pending Outside California* (form SUBP-030) includes two court address boxes in the boxes at the top left of the form for the party to identify both the California court where the application is being filed and the out-of-state court in which the action is pending. There is a space for the case number in the out-of-state action, as well as a space for a case number in the California proceedings, should a court wish to issue one at the time the application is filed.³

¹ Unless otherwise indicated, all statutory references hereafter are to the Code of Civil Procedure.

² Because such an application does not constitute making an appearance, California counsel is not required for this filing. (§ 2029.30(a).)

³ A California case number is not required unless a party or witness files a petition seeking relief following issuance of a subpoena, at which time a civil cover sheet is required for the first time in the California court. (§ 2029.600.) However, because a court may wish to assign a number at the time the application is filed, for document management purposes, a space is included for a California case number.

The proposed application form includes a statement that an original or true copy of the foreign subpoena is attached. There is also a statement confirming that the proposed California subpoena submitted with the application contains terms identical to those in the foreign subpoena. (§ 2029.300(a), (b) & (d)(1).) The form is signed under penalty of perjury.

At the bottom of the form is a notice box with a reminder that a fee is required and a warning that the subpoena must be served in compliance with California law. (§§ 2029.300(b)(2), 2029.400.)

Subpoena forms

The first three forms in the proposed set of deposition subpoenas mirror the current subpoenas in use for depositions in California actions:

- *Subpoena for Production of Business Records in Action Pending Outside California* (form SUBP-035, based on current form SUBP-010);
- *Deposition Subpoena for Personal Appearance in Action Pending Outside California* (form SUBP-040, based on current form SUBP-015);
- *Deposition Subpoena for Personal Appearance and Production of Documents and Things in Action Pending Outside California* (form SUBP-045, based on current form SUBP-020).

Most of the text of the current subpoena forms has been retained in the new forms, because the act incorporates the provisions of the Code of Civil Procedure dealing with the production of evidence (beginning with section 1985) and the Civil Discovery Act (beginning with section 2016.010), as well as any other law or court rule governing depositions or discovery under these new provisions. (§ 2029.500.) Two items that are not pertinent to depositions in out-of-state actions have not been included on the new forms: the item indicating whether a videotaped deposition is to be used at trial under section 2025.620(d) and the statement that the deposition may take place within 150 miles of a natural person's residence if taken within the county in which the action is pending (see form SUBP-040, item 5 and form SUBP-045, item 8). By their nature, these depositions in out-of-state actions will never take place in that county.

The fourth proposed subpoena form, *Subpoena for Inspection of Premises in Action Pending Outside California* (form SUBP-050), has been developed to be used to enforce a foreign subpoena permitting the inspection of property in California. (§ 2029.200(b)(3).) There is no equivalent California subpoena for this discovery because under California law such a demand may be made only to a party, without requiring a subpoena. (See § 2031.010 et seq.) Proposed form SUBP-050 includes items for all the information that would be required in such a

demand, including the time and place of inspection, identification of anyone who is permitted to enter the property, and specification of any activity that will be conducted during the inspection. A reference to section 2031.010 itself is included at the bottom of the form, so that a person served with the subpoena can easily locate the California statutes regarding this type of discovery.

The act mandates that the subpoenas issued under these provisions:

1. Incorporate the terms of the foreign subpoena;
2. Contain or be accompanied by the names, addresses, and phone numbers of all counsel of record or parties without counsel;
3. Bear the caption and case number of the out-of-state case; and
4. State the name of the court that issues it (when issued by a clerk) or the court for the county in which the discovery is to be conducted (when issued by an attorney of record).

(§§ 2029.300(d), 2029.350(b).)

As to the first requirement, the application for a court-issued subpoena includes a statement under penalty of perjury that the proposed California subpoena contains terms identical to those in the foreign subpoena. For an attorney-issued subpoena, it is the responsibility of California counsel to issue a subpoena that has terms identical to those in the foreign subpoena it is based on. To the extent that terms in the foreign subpoena do not fit within the text and items in the California forms, these terms may be added to the form. (See item 6 on form SUBP-035, item 4 on form SUBP-040, item 6 on form SUBP-045, and item 5 on form SUBP-050.)

The second requirement is met by including an item for entry of the name, address, and phone number of all counsel in the out-of-state action and any nonrepresented parties. (This item is at the bottom of the first page of each subpoena form).

The final two requirements are met by the boxes on the top of the forms, which include boxes for identifying both pertinent courts: the court of the California county in which the discovery is sought and the out-of-state court in which the action is pending. There are also boxes for the caption and case number of the out-of-state action.

Alternatives Considered

Because the recommended forms are legislatively mandated, the committee did not consider the alternative of not developing them.

Comments From Interested Parties

The recommended forms were circulated for public comment during the Spring

2009 comment cycle. Eight comments were received. Five courts, the Superior Court of Kern, Los Angeles, Riverside, San Bernardino, and San Diego Counties, and the Orange County Bar Association agreed with the proposal. The Committee on Administration of Justice of the State Bar (CAJ) and the Process Server Institute (PSI) also provided comments generally approving the proposed forms, but requesting some modifications. The more significant CAJ and PSI comments are addressed below. A chart summarizing all the comments received and the committee's responses is attached at pages 17-27.

Application (form SUBP-030)

Both PSI and CAJ propose changing the name of the application form. PSI suggests "Application for Issuance of Deposition Subpoena in Action Pending Outside California" (proposed new text is underlined). CAJ proposed that the word "Deposition" be removed from the phrase "Deposition Subpoena" because one of the subpoenas is not for a deposition but for an inspection of property. The committee has modified the title, substituting the phrase "Discovery Subpoena" for "Deposition Subpoena."⁴

As circulated, the application form required that a copy of the foreign subpoena that authorized a deposition in the out-of-state application action be attached to the form. Both PSI and CAJ propose that item 3 of the form be modified to track the act more closely, and to permit the original or a copy be submitted. The committee has made this modification.

PSI also proposes changing item 3 to require the subpoenaing party to list the attached authorizing documents. PSI asserts that the act's requirement (reflected in the form) of proof only of the existence of a foreign subpoena in order to obtain a California subpoena may be misleading to attorneys in states that require more to take an out-of-state deposition. The requested modification was not made. The act requires issuance of a California subpoena based on a foreign subpoena, however denominated.⁵ If the out-of-state court requires a party to comply with procedures over and above such authorization, it is up to the parties in the action, not the clerks who are to issue subpoenas under the act, to know those requirements and comply with them. Moreover, requiring a subpoenaing party to list the documents submitted with the application form will not facilitate that party's compliance with the out-of-state jurisdiction's laws.

⁴ A similar modification was made wherever the term "deposition subpoena" is used in the form to reference all of the new subpoena forms.

⁵ The act defines "foreign subpoena" as a document, whatever it is called, issued under authority of an out-of-state court requiring a person to attend and give testimony at a deposition, produce and permit inspection and copying of documents or other things, or permit inspection of property. (§ 2029.200(b) and (c).)

CAJ proposes that item 3 be reformatted to require the party to indicate whether the attached foreign subpoena is for deposition testimony, production of records, inspection of property, or a combination thereof, in order to clarify that under California law the requirement to testify may be joined with the requirement to produce documents. Item 3 has been reformatted in light of this comment.

CAJ questions whether it is appropriate for the application form to require a verification under penalty of perjury when the act does not specifically include such a requirement. The committee has retained the verification on the proposed form. The act requires that the party provide a foreign subpoena, however denominated, and that the clerk issue a California subpoena that includes terms identical to those in the foreign subpoena. The verification is included so that a court is assured that the proposed subpoena being submitted with the application does include identical terms.

Instruction Sheet

PSI proposes development of an instruction sheet directed to court clerks for use with the application form to ensure consistent application of the act throughout California. One of the goals of the act is to facilitate consistent procedures, and education of court clerks on the new provisions will be necessary. Judicial Council instruction sheets, however, are generally directed to the public, not to courts. This comment will be referred to the AOC's Education Division for consideration when preparing training materials for courts throughout the state.

Proof of Service on Document Subpoenas

PSI proposes that an additional item be included in the proof of service on the subpoenas seeking documents (forms SUBP-035 and SUBP-045) to indicate that the *Notice to Consumer or Employee and Objection* (form SUBP-025) was served on the witness with the subpoena. Code of Civil Procedure section 1985.3(c) requires that the subpoenaing party serve the witness with a completed proof of service of that notice (form SUBP-025), showing that the notice was served on the consumer. The committee has added the proposed item as item 3 on the proofs of service on the back of forms SUBP-035 and SUBP-045.

PSI also points out that items 4f and g in the proof of service on SUBP-035, which concern service by registered professional photocopiers, are applicable to documents-only subpoenas but not to any other subpoenas. The other proposed subpoena forms have been modified to delete those two items in order to avoid confusion of out-of-state parties.

Formatting Changes

While reviewing the forms in light of the comments received, the committee noted that an all-caps format was used in some advisory items on the forms. See, e.g.,

form SUBP-035 at item 5 and SUBP-045 at item 7. The text in these forms has been changed to lower case to improve readability. The items are still in boldface type for emphasis.

Implementation Requirements and Costs

There will be some cost in making the new forms available to the public. While training of clerks on the new forms and procedures will be needed, there are no implementation requirements beyond those inherent in the new statute. The act mandates that the new forms go into effect by January 1, 2010.

Attachments

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY
<i>Court for county in which discovery is to be conducted:</i> SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY, STATE, AND ZIP CODE: BRANCH NAME:	
<i>Court in which action is pending:</i> Name of Court: STREET ADDRESS: MAILING ADDRESS: CITY, STATE, AND ZIP CODE: COUNTRY:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CALIFORNIA CASE NUMBER (if any assigned by court):
SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS IN ACTION PENDING OUTSIDE CALIFORNIA	CASE NUMBER (of action pending outside California):

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (*name, address, and telephone number of deponent, if known*):

1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in item 3, as follows:

To (<i>name of deposition officer</i>): _____ On (<i>date</i>): _____ At (<i>time</i>): _____ Location (<i>address</i>): _____
Do not release the requested records to the deposition officer prior to the date and time stated above.

- a. by delivering a true, legible, and durable **copy** of the business records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1.
- b. by delivering a true, legible, and durable **copy** of the business records described in item 3 to the deposition officer at the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code section 1563(b).
- c. by making the **original** business records described in item 3 available for inspection at your business address by the attorney's representative and permitting **copying** at your business address under reasonable conditions during normal business hours.
2. *The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records must be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1561.*

3. The records to be produced are described as follows:

- Continued on Attachment 3 (*use form MC-025*).
4. Attorneys of record in this action or parties without attorneys are (*name, address, telephone number, and name of party represented*):

Continued on Attachment 4 (*use form MC-025*).

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER (of action pending outside California):
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5. If you have been served with this subpoena as a custodian of consumer or employee records under Code of Civil Procedure section 1985.6 and a motion to quash or an objection has been served on you, a court order or agreement of the parties, witnesses, and consumer or employee affected must be obtained before you are required to produce consumer or employee records.

6. Other terms or provisions from out-of-state subpoena, if any (specify):

Continued on Attachment 6 (use form MC-025).

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF \$500 AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued:

(TYPE OR PRINT NAME)	▶	(SIGNATURE OF PERSON ISSUING SUBPOENA)
		(TITLE)

PROOF OF SERVICE OF SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS

1. I served this *Subpoena for Production of Business Records In Action Pending Outside California* by personally delivering a copy to the person served as follows:

a. Person served (name):

b. Address where served:

c. Date of delivery:

d. Time of delivery:

e. Witness fees and mileage both ways (check one):

(1) were paid. Amount: \$ _____

(2) were not paid.

(3) were tendered to the witness's public entity employer as required by Government Code section 68097.2. The amount tendered was (specify): \$ _____

f. Fee for service: \$ _____

2. I received this subpoena for service on (date):

3. I also served a completed *Proof of Service of Notice to Consumer or Employee and Objection* (form SUBP-025) by personally delivering a copy to the person served as described in 1 above.

4. Person serving:

a. Not a registered California process server

b. California sheriff or marshal

c. Registered California process server

d. Employee or independent contractor of a registered California process server

e. Exempt from registration under Business and Professions Code section 22350(b)

f. Registered professional photocopier

g. Exempt from registration under Business and Professions Code section 22451

h. Name, address, telephone number, and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(For California sheriff or marshal use only)

I certify that the foregoing is true and correct.

Date:

Date:

▶ _____
(SIGNATURE)

▶ _____
(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY
<i>Court for county in which discovery is to be conducted:</i> SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
<i>Court in which action is pending:</i> Name of Court: STREET ADDRESS: MAILING ADDRESS: CITY, STATE, AND ZIP CODE: COUNTRY:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CALIFORNIA CASE NUMBER (if any assigned by court):
DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE IN ACTION PENDING OUTSIDE CALIFORNIA	CASE NUMBER (of action pending outside California):

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (*name, address, and telephone number of deponent, if known*):

1. YOU ARE ORDERED TO APPEAR IN PERSON TO TESTIFY AS A WITNESS in the action specified above at the following **date, time, and place**:

Date:	Time:	Address:
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- a. As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in item 2. (Code Civ. Proc., § 2025.230.)
- b. This deposition will be recorded stenographically through the instant visual display of testimony and by audiotape videotape.
- 2. If the witness is a representative of a business or other entity, the matters upon which the witness is to be examined are as follows:

Continued on Attachment 2 (*use form MC-025*).

3. Attorneys of record in this action or parties without attorneys are (*name, address, telephone number, and name of party represented*):

Continued on Attachment 3 (*use form MC-025*).

PLAINTIFF/PETITIONER:	CASE NUMBER (of action pending outside California):
DEFENDANT/RESPONDENT:	

4. Other terms or provisions from out-of-state subpoena, if any (specify):

Continued on Attachment 4 (use form MC-025).

5. At the deposition, you will be asked questions under oath. Questions and answers are recorded stenographically at the deposition; later they are transcribed for possible use at trial. You may read the written record and change any incorrect answers before you sign the deposition. You are entitled to receive witness fees and mileage actually traveled both ways. The money must be paid, at the option of the party giving notice of the deposition, either with service of this subpoena or at the time of the deposition. Unless the court orders or you agree otherwise, if you are being deposed as an individual, the deposition must take place within 75 miles of your residence. The location of the deposition for all deponents is governed by Code of Civil Procedure section 2025.250.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF \$500 AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued:

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PERSON ISSUING SUBPOENA)

(TITLE)

PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE

1. I served this *Deposition Subpoena for Personal Appearance in Action Pending Outside California* by personally delivering a copy to the person served as follows:

- a. Person served
- b. Address where served:

c. Date of delivery: _____ d. Time of delivery: _____

e. Witness fees and mileage both ways (check one):

(1) were paid. Amount: \$ _____

(2) were not paid.

(3) were tendered to the witness's public entity employer as required by Government Code section 68097.2. The amount tendered was (specify): \$ _____

f. Fee for service: \$ _____

2. I received this subpoena for service on (date):

3. Person serving:

- a. Not a registered California process server
- b. California sheriff or marshal
- c. Registered California process server
- d. Employee or independent contractor of a registered California process server
- e. Exempt from registration under Business and Professions Code section 22350(b)
- f. Name, address, telephone number, and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

▶ _____
(SIGNATURE)

(For California sheriff or marshal use only)
I certify that the foregoing is true and correct.

Date:

▶ _____
(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): <hr/> TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY
Court for county in which discovery is to be conducted: SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Court in which action is pending: Name of Court: STREET ADDRESS: MAILING ADDRESS: CITY, STATE, AND ZIP CODE: COUNTRY:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CALIFORNIA CASE NUMBER (if any assigned by court):
DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS IN ACTION PENDING OUTSIDE CALIFORNIA	CASE NUMBER (of action pending outside California):

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (*name, address, and telephone number of deponent, if known*):

1. YOU ARE ORDERED TO APPEAR IN PERSON TO TESTIFY AS A WITNESS in this action at the following date, time, and place:

Date:	Time:	Address:
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- a. As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in item 4. (Code Civ. Proc., § 2025.230.)
 - b. You are ordered to produce the documents and things described in item 3.
 - c. This deposition will be recorded stenographically through the instant visual display of testimony and by audiotape videotape.
2. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.
3. The documents and things to be produced and any testing or sampling being sought are described as follows:

Continued on Attachment 3 (*use form MC-025*).

4. If the witness is a representative of a business or other entity, the matters upon which the witness is to be examined are described as follows:

Continued on Attachment 4 (*use form MC-025*).

5. Attorneys for the parties to this action or parties without attorneys are (*name, address, telephone number, and name of party represented*):

Continued on Attachment 5 (*use form MC-025*).

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
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6. Other terms or provisions from out-of-state subpoena, if any (*specify*):

Continued on Attachment 6 (*use form MC-025*).

7. **If you have been served with this subpoena as a custodian of consumer or employee records under Code of Civil Procedures section 1985.3 or 1985.6 and a motion to quash or an objection has been served on you, a court order or agreement of the parties, witnesses, and consumer or employee affected must be obtained before you are required to produce consumer or employee records.**

8. *At the deposition, you will be asked questions under oath. Questions and answers are recorded stenographically at the deposition; later they are transcribed for possible use at trial. You may read the written record and change any incorrect answers before you sign the deposition. You are entitled to receive witness fees and mileage actually traveled both ways. The money must be paid, at the option of the party giving notice of the deposition, either with service of this subpoena or at the time of the deposition. Unless the court orders or you agree otherwise, if you are being deposed as an individual, the deposition must take place within 75 miles of your residence. The location of the deposition for all deponents is governed by Code of Civil Procedure section 2025.250.*

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF \$500 AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued:

(SIGNATURE OF PERSON ISSUING SUBPOENA)

(TYPE OR PRINT NAME)

(TITLE)

PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS

1. I served this *Deposition Subpoena for Personal Appearance and Production of Documents and Things in Action Pending Outside California* by personally delivering a copy to the person served as follows:

- a. Person served (*name*):
- b. Address where served:

c. Date of delivery:

d. Time of delivery:

e. Witness fees and mileage both ways (*check one*):

(1) were paid. Amount: \$ _____

(2) were not paid.

(3) were tendered to the witness's public entity employer as required by Government Code section 68097.2. The amount tendered was (*specify*): \$ _____

f. Fee for service: \$ _____

2. I received this subpoena for service on (*date*):

3. I also served a completed *Proof of Service of Notice to Consumer or Employee and Objection* (form SUBP-025) by personally delivering a copy to the person served as described in 1 above.

4. Person serving:

- a. Not a registered California process server
- b. California sheriff or marshal
- c. Registered California process server
- d. Employee or independent contractor of a registered California process server
- e. Exempt from registration under Business and Professions Code section 22350(b)
- f. Name, address, telephone number, and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(For California sheriff or marshal use only)
I certify that the foregoing is true and correct.

Date:

Date:

(SIGNATURE)

(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): <hr/> TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY
Court for county in which discovery is to be conducted: SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Court in which action is pending: Name of Court: STREET ADDRESS: MAILING ADDRESS: CITY, STATE, AND ZIP CODE: COUNTRY:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CALIFORNIA CASE NUMBER (if any assigned by court):
SUBPOENA FOR INSPECTION OF PREMISES IN ACTION PENDING OUTSIDE CALIFORNIA	CASE NUMBER (of action pending outside California):

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (*name, address, and telephone number, if known, of person in control of property to be inspected*):

1. YOU ARE ORDERED TO PERMIT THE INSPECTION OF THE PREMISES BELOW, at the following time and date:

Date:	Time:	Address or description of premises:
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2. The individuals permitted to enter the premises for the inspection are (*specify party and any other individuals permitted to enter*):

Continued on Attachment 2 (*use form MC-025*).

3. Any testing, sampling, or other activity to take place during the inspection are described as follows:

Continued on Attachment 3 (*use form MC-025*).

4. Attorneys for the parties to this action or parties without attorneys are (*name, address, telephone number, and name of party represented*):

Continued on Attachment 4 (*use form MC-025*).

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER (of action pending outside California):
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5. Other terms or provisions from out-of-state subpoena, if any (*specify*):

Continued on Attachment 5 (*use form MC-025*).

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF \$500 AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued:

(SIGNATURE OF PERSON ISSUING SUBPOENA)

(TYPE OR PRINT NAME)

(TITLE)

PROOF OF SERVICE OF SUBPOENA FOR INSPECTION OF PREMISES

1. I served this *Deposition Subpoena for Inspection of Premises in Action Pending Outside California* by personally delivering a copy to the person served as follows:

- a. Person served (*name*):
- b. Address where served:

c. Date of delivery:

d. Time of delivery:

e. Witness fees and mileage both ways (*check one*):

- (1) were paid. Amount: \$ _____
- (2) were not paid.
- (3) were tendered to the witness's public entity employer as required by Government Code section 68097.2. The amount tendered was (*specify*): \$ _____

f. Fee for service: \$ _____

2. I received this subpoena for service on (*date*):

3. Person serving:

- a. Not a registered California process server
- b. California sheriff or marshal
- c. Registered California process server
- d. Employee or independent contractor of a registered California process server
- e. Exempt from registration under Business and Professions Code section 22350(b)
- f. Name, address, telephone number, and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(SIGNATURE)

(For California sheriff or marshal use only)

I certify that the foregoing is true and correct.

Date:

(SIGNATURE)

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	Commentator	Position	Comment	Committee Response
1.	Process Server Institute by Tony Klein San Francisco		<p>The title of the document might be more accurately titled <i>Application for Issuance of Deposition Subpoena in Action Pending Outside California.</i></p> <p>The new law only requires an original or true copy of the foreign subpoena to <u>accompany</u> the Application. It makes sense to <u>attach</u> it.</p> <p>Other states will still require issuance of a “Commission,” and “Letters Rogatory,” “Notice of Deposition with Proof of Service on Opposition Counsel,” etc. Although there may not be a requirement under the new California law, there may be a need to include reference to them as an attachment because most other states cannot initiate this process without them. An application for a California subpoena WITHOUT them is inappropriate under the law of the foreign state. The new law may inadvertently imply that a California subpoena may issue without first complying with the out-of-state laws. Furthermore, if only the subpoena is attached, the California court file will not have any reference to a list of all counsel and parties, other than the party making the application. The list of all counsel is required to be served with the subpoena on the witness but filed with the Application. The counsel list</p>	<p>The committee disagrees, but has modified the title in the response to other comments.</p> <p>The committee agrees and the form so states.</p> <p>The committee disagrees that documents such as a Notice of Deposition need to accompany the application. The new act provides that to request issuance of a California subpoena, a party is to submit an original or copy of a foreign subpoena to the court in this state. (Code Civ. Proc., § 2029.300(a). The act defines the required foreign subpoena as a document issued under authority of a court in a foreign jurisdiction, which, however denominated, requires a party to attend a deposition; produce documents, records, or tangible things for review and inspection; or permit inspection of property. (Code Civ. Proc., § 2029.200(b), (e).) To the extent the foreign jurisdiction requires anything further before the discovery request is valid under that state’s law, it is up to the parties to the action to know and comply with that law. Nothing further is required to support an application here in California.</p>

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			<p>certainly belongs in the court file.</p> <p>This could be accomplished by simply using a box and the words “See Attached:”, with a space to briefly describe what is attached. What is attached (Notice of Deposition, Commission, Order for Issuance of Commission, etc.) will accompany a proof of service that list of all counsel.</p> <p><i>Deposition Subpoena for Production of Business Records in Action Pending Outside California + All Others</i></p> <p>The title of the document might be more accurately titled <i>Application for Deposition Subpoena for Production of Business Records <u>for Use</u> in Action Pending Outside California.</i></p> <p>Item 4, listing all counsel and unrepresented parties could also include a box and the words “See attached proof of service”. In most cases, the deposition will be noticed on opposing counsel, or there may have been some other document that was served, BEFORE the Application is filed for issuance of the subpoena. It will eliminate the repetition of having to prepare yet another list of all who were already noticed.</p>	<p>The list of counsel mandated by the act must accompany the California subpoena, not the application form. (Code Civ. Proc., § 2029.300.)</p> <p>The committee respectfully disagrees. The title of this form as circulated tracks the title of the current subpoena form used in California actions.</p> <p>The act requires that the subpoena itself contain or be accompanied by a list of all counsel and non-represented parties, along with their addresses and phone numbers. (Code Civ. Proc., § 2029.300(d)(2).) Such information would not necessarily be included on a proof of service.</p>

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			<p>You could retain more “real estate” on the form by eliminating a line for “Street Address” AND “Mailing Address”, and possibly “Branch Name” from both the California and foreign court locations in each respective box.</p> <p>The Proof of Service in Item 1 should have a box referencing whether a Notice to Consumer or Employee and Objection form was also served on the witness. The Notice to Consumer form includes a proof of service and must be served on the CONSUMER, but the form must ALSO be served with the subpoena on the WITNESS showing that it was indeed served on the Consumer.</p> <p>Items 3f and 3g on the Proof of Service are redundant, and should be removed from the personal appearance subpoenas because the exemption from registration is extended to only those serving “records only” subpoenas.</p> <p>Proposal for Instruction Sheet Attached is an Instruction Sheet from Colorado. I suggest a similar informational instruction sheet be prepared because of the wildly disparate procedures currently being employed by counties throughout the state. This new procedure will be a “sea change” for California court clerks.</p>	<p>In response to this comment, the form has been modified to include an optional item to indicate that the witness was served with a completed proof of service of the <i>Notice to Consumer or Employee and Objection</i> (form SUBP-025) at the same time the witness was served with the subpoena. (Code Civ. Proc., § 1983.1.)</p> <p>The forms have been modified in light of this comment.</p> <p>A goal of the new legislation is to standardize procedures across the state. The committee agrees that courts will need to educate staff regarding the new procedures. However, the Judicial Council does not generally adopt forms for internal court purposes. The committee will refer this comment to the AOC’s Education Division for</p>

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			<p>The new statute specifies that the application may be made by out-of-state counsel and does not constitute an appearance. (CCP § 2029.300(a)). In other words, out-of-state counsel, or an In Pro Se Party may make the Application for the subpoena. This should be spelled out clearly because many courts currently insist that a California barred attorney must file for the issuance of a subpoena in an out-of-state action. This is not the case in the new law, and has NEVER been a requirement since its original enactment in 1886.</p> <p>No Civil Case Cover Sheet is required. (CCP §2029.300(a)(1))</p> <p>The filing fee is specified by cross-referencing it to Gov't Code § 70626. (CCP §2029.300(b)(2)). That fee could be stated as \$20 without having to look it up.</p> <p>Upon presentation of the signed Application the clerk shall issue the subpoena (CCP §2029.300(c)). Although this mandate clearly exists under CCP 1985(c), and 1986(c), the statute that heretofore required clerks to issue</p>	<p>consideration when developing training materials</p> <p>The committee agrees that the act clarifies that an application may be filed by out-of-state counsel.</p> <p>The committee agrees that no civil cover sheet is required when an application is made under the act.</p> <p>Because the amount of filing fees can and does change, the committee has used the statutory reference rather than a dollar amount, so that the form will not require amendment each time the fees change.</p> <p>The committee agrees that the act clarifies the clerk's responsibilities and authority to issue subpoenas.</p>

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			<p>subpoenas for use of depositions in out-of-state actions, clerks routinely REFUSE to issue any subpoenas. These obligations of the clerk, now set forth in 3 statutes, should be spelled out more clearly.</p> <p>The subpoena shall state “the caption and case number of the out-of-state case to which it relates” should be spelled out. (CCP § 2029.300(d)(3)) The practice in San Francisco Superior Court, and perhaps others, is to reference the party seeking the issuance of a subpoena for use in an out-of-state action by referring to them as a “Petitioner” and the other side as a “Respondent.” This is particularly confusing to the court reporter, the witness, and out of-state counsel, especially in a dissolution of marriage case when the Respondent makes the request. The Respondent is the Petitioner in the California case, and the Petitioner in the out of-state case is the Respondent.</p>	<p>In the forms proposed, the application form is to be accompanied by the proposed subpoena completed by the requesting party. Hence it will be up to the requesting party to properly identify the parties in the subpoena.</p>
2.	Orange County Bar Association by Michael G. Yoder President Newport Beach	A	No additional comments.	No response is necessary.
3.	State Bar of California, Committee on Administration of Justice by Saul Bercovitch Legislative Counsel	AM	CAJ supports this proposal in general, but recommends some changes, as discussed below. <u>Application Form</u>	

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	San Francisco		<p>1. <u>Caption</u>. The caption should be modified to add a field for the state or country in which the foreign action is pending.</p> <p>This caption states that it is an application for a “<u>deposition</u> subpoena . . .” (emphasis added). However, one of the available subpoenas is a “Subpoena for Inspection of Premises in Action Pending Outside of California.” Since this subpoena does not have the word “deposition” in it (and it does not call for a “deposition,” in the common sense of that word), the word “deposition” should be deleted from the caption.</p> <p>2. <u>Item 2</u>. As with the caption, this item states that the applicant is requesting the court to “issue a <u>deposition</u> subpoena . . .” (emphasis added). Since the “Subpoena for Inspection of Premises in Action Pending Outside of California” does not have the word “deposition” in it (and it does not call for a “deposition,” in the common sense of that word), the word “deposition” should be deleted from item 2.</p> <p>3. <u>Item 3</u>. Item 3 of the form states: <i>Attached hereto is a true and correct copy of the document from the out-of-state court listed above that requires the deponent to attend and</i></p>	<p>1. The committee agrees and has modified the box showing the court in which the action is pending to include the state and country in which it is located.</p> <p>In light of this comment, the committee has replaced the term “deposition subpoena” with “discovery subpoena”.</p> <p>2. See above response.</p> <p>3. The form has been modified and reformatted in light of this comment.</p>

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			<p><i>give testimony at a deposition; produce and permit inspection and copying of designated materials, information, or tangible things in the possession, custody, or control of the deponent; or permit the inspection of premises under the control of the deponent.</i></p> <p>CAJ recommends that Item 3 be modified to read as follows: <i>Attached is (check one):</i> <input type="checkbox"/> <i>The original</i> <input type="checkbox"/> <i>A true and correct copy of the document from the out-of-state court listed above that requires the deponent to (check the appropriate item(s)):</i> <input type="checkbox"/> <i>Attend and give testimony at a deposition;</i> <input type="checkbox"/> <i>Produce and permit inspection and copying of designated materials, information, or tangible things in the possession, custody, or control of the deponent;</i> <input type="checkbox"/> <i>Permit the inspection of premises under the control of the deponent.</i></p> <p>Since Section 2029.300(a) gives the requesting party the option of submitting “the original or a true and correct copy of the foreign subpoena,” the form should allow the applicant to state which it has submitted.</p> <p>Since the statute, like statutes for deposition subpoenas in California cases, allows the requesting party to combine the requirement to</p>	<p>The formatting of this item has been modified in response to this comment.</p> <p>This modification has been made.</p>

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			<p>testify with the requirement to produce documents, it is appropriate for the applicant to indicate which actions it is requesting. The language in the proposed form may suggest that the applicant can choose only one of the three options.</p> <p>4. <u>Declaration under penalty of perjury</u>. The Act does not require that the statements contained in the application be stated under penalty of perjury (and does not require a “verified application”), yet the proposed application form contains a signature block in which the signer states under penalty of perjury that the contents of the application are true and correct. Although there may be legitimate reasons for requiring this, CAJ raises the question of whether it is appropriate, absent a statutory requirement.</p> <p>5. <u>Miscellaneous</u>. There are some minor typographical errors on the form. The phrase “out-of-state court” is fully hyphenated in item 3 but only partially hyphenated in item 4. In addition, there are several extra spaces between words on the form (<i>e.g.</i>, item 1: “under Code of Civil Procedure”; item 2: “name and address of deponent”; box on bottom of form: “A deposition subpoena must be personally served.”).</p>	<p>4. The committee has retained the verification in order to assure the court that a foreign subpoena has been issued and that the proposed California subpoena includes terms identical to that foreign subpoena.</p> <p>5. The form has been corrected.</p>

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			<p><u>Deposition Subpoena for Production of Business Records</u></p> <p>The caption should be modified to add a field to identify the state or country in which the out-of-state proceeding is pending.</p> <p><u>Deposition Subpoena for Personal Appearance</u></p> <p>The caption should be modified to add a field to identify the state or country in which the out-of-state proceeding is pending.</p> <p><u>Deposition Subpoena for Personal Appearance and Production of Documents and Things</u></p> <p>The caption should be modified to add a field to identify the state or country in which the out-of-state proceeding is pending.</p> <p><u>Subpoena for Inspection of Premises</u></p> <p>The caption should be modified to add a field to identify the state or country in which the out-of-state proceeding is pending.</p> <p>Since the subpoena is not entitled “deposition</p>	<p>The form has been modified as proposed.</p> <p>The form has been modified in light of this</p>

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			<p>subpoena” and since with an inspection of premises there is no “deponent,” as that term is commonly used, the words “of deponent” should be deleted from the first sentence in the subpoena, so that it reads as follows: <i>THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number, if known):</i></p> <p>In addition, there is a minor typographical error in item 1 of the proof of service (“I served this Subpoena for Inspections_g of Premises . . .”)</p>	<p>comment.</p> <p>The error has been corrected.</p>
4.	Superior Court of Kern County by Christina Rodriguez Assistant Court Supervisor	A	No additional comments.	No response is necessary.
5.	Superior Court of Los Angeles County	A	Agree with proposed changes.	No response is necessary.
6.	Superior Court of Riverside County by Riverside Superior Court Staff	A	Forms are very convenient for litigants.	The commentator’s support for the forms is noted.
7.	Superior Court of San Bernardino County by Cydney Fowler Court District Manager Barstow	A	From an operations view point the proposed changes will be helpful to clerks processing requests for out of state deposition subpoenas.	The commentator’s support for the forms is noted.

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8.	Superior Court of San Diego County by Mr. Michael M. Roddy Executive Officer	A	No additional comments.	No response is necessary.