

**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. Lee Smalley Edmon, Chair
Discovery and Rules Reform Subcommittee
Hon. Andrew P. Banks, Chair
Anne M. Ronan, Committee Counsel, 415-865-8933
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DATE: August 8, 2008

SUBJECT: Civil Discovery: Deposition Subpoenas (revise forms SUBP-015 and SUBP-020) (Action Required)

Issue Statement

The current Judicial Council forms *Deposition Subpoena for Personal Appearance* (form SUPSP-015) and *Deposition Subpoena for Personal Appearance and Production of Documents and Things* (form SUBP-020) do not provide information regarding where a deponent may be required to appear for deposition. The forms should be revised to set forth the geographic limitations. The revised forms would also correct a statutory reference to reflect the renumbering of the pertinent statute.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2009:

1. Revise *Deposition Subpoena for Personal Appearance* (form SUBP-015); and
2. Revise *Deposition Subpoena for Personal Appearance and Production of Documents and Things* (form SUBP-020).

These forms are revised to add information explaining where a deponent may be required to appear for deposition.

Revised forms SUBP-015 and SUBP-020 are attached at pages 5–8.

Rationale for Recommendation

Information on Geographic Scope

The proposed change to the subpoena forms was suggested by a constituent of State Senator Abel Maldonado, who forwarded it to the Administrative Office of the Courts. The constituent had been served with a deposition subpoena for a deposition set at a location over 200 miles from the deponent's residence, beyond the statutory reach of a deposition subpoena. He was upset that the subpoena form did not include information regarding the geographic reach of the subpoena.

The discovery statutes limit the distance that a person can be compelled by subpoena to travel to a deposition. Unless the parties and witness agree or the court otherwise orders, the deposition of a natural person must take place either (1) within 75 miles of the deponent's residence, or (2) within 150 miles of the deponent's residence if within the county where the action is pending. (Code Civ. Proc., § 2025.250(a).) The deposition of a party organization must take place (1) within 75 miles of that party's principal executive or business office in California, or (2) within 150 miles of the office if within the county where the action is pending. (Id., § 2025.250(b).) The deposition of a non-party organization must take place within 75 miles of that party's principal executive or business office in California. (Id., § 2025.250(c).) Organizations without designated principal offices within the state may be deposed either (1) within 75 miles of any executive office of that organization or (2) within the county in which the action is pending. (Id., § 2025.250(d).)

There is currently nothing on the face of the subpoena that describes the geographic limitation on the subpoena's reach. Thus an individual or organization that receives a subpoena for a deposition set at a greater distance than allowed by statute has no way of knowing from the face of the subpoena that it is not effective. The revisions will assist subpoenaed individuals and entities by providing an individual deponent with the information about what distance he or she may be required to travel, and by identifying for all deponents, including organizations and business entities, the statute where such information may be found.

The revisions to forms SUBP-015 and SUBP-020 consist of adding the following statement to the information provided to the deponent (at the end of item 3 in form SUBP-015 and item 6 in form SUBP-020):

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 or within 150 miles of your residence *if* the deposition will be taken within the county of the court where the action is pending. The location of

the deposition for all deponents is governed by Code of Civil Procedure section 2025.250.

Other revisions

The statutory reference in item 1(a) on both forms, currently Code of Civil Procedure section 2025.220(a)(6), would be changed to Code of Civil Procedure section 2025.230 to reflect the renumbering of the pertinent statute.

Form SUBP-020 would be revised to include the words “Plaintiff” and “Defendant” in the party box on the top left, which terms had been inadvertently omitted from that form at some prior time.

Comments From Interested Parties

Revised forms SUBP-015 and SUBP-020 were circulated for public comment during the spring 2008 comment cycle. Eleven comments were received, from judicial officers and court executives and administrators, bar organizations, and individuals.¹ Of the eleven commentators, 7 agreed without substantive comment to the proposed revisions; 2 commentators proposed minor amendments to the text of the revisions (which have been incorporated by the committee); and 2 objected to the revisions.

The two substantive objections, from commentators Tony Klein of the Process Server Institute and Superior Court of Orange County, are based on a similar ground: adding a statement to the face of the subpoena that the subpoena’s geographic reach is limited would encourage objections. The commentator from Orange County Superior Court adds that some objections are likely to arise from confusion over how the distance is to be measured (linear distance from the deposition location or driving distance) and proposes that, if the revisions are to be approved, the Judicial Council also develop a rule identifying which method should be used. The commentator notes that many attorneys think that the linear method applies, but that, for juror venires, courts have held that driving distance is the proper measure.

The committee considered these comments and concluded that the inclusion of a correct statement of the law on the subpoenas is appropriate even though it may result in increased objections by deponents who are asked to appear at a distance far from their residences. The proposed new language in the form (“within 75 miles of your residence”) mirrors that in the statute (“within 75 miles of the deponent’s residence”; Code Civ. Proc., § 2025.250) and is not intended in any way to change the current law. The question of the advisability of adding a rule to clarify how the distances set forth in Code of Civil Procedure section 2025.250 should be measured

¹ A chart summarizing the comments and the committee’s responses is set forth at pages 9–13.

is beyond the scope of the current proposal. The committee will consider this proposal in the future as time and resources permit.

Alternative Action Considered

The committee considered leaving form SUBP-015 and form SUPB-020 unchanged. However, modifying the forms to include a statement of their geographic limitations appears to be beneficial to the public.

Implementation Required and Cost

There should be no significant implementation requirements or costs other than that of making this form available to the public.

Attachments

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	<p style="text-align: center;">FOR COURT USE ONLY</p> <p style="text-align: center;">DRAFT v.6 08/11/08</p> <p style="text-align: center;">NOT APPROVED BY JUDICIAL COUNCIL</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/ PETITIONER: DEFENDANT/ RESPONDENT:	
DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE	CASE NUMBER:

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 2. (Code Civ. Proc., § 2025.230.)
- b. This deposition will be recorded stenographically through the instant visual display of testimony and by audiotape videotape.
- c. This videotape deposition is intended for possible use at trial under Code of Civil Procedure section 2025.620(d).

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:

3. *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 or within 150 miles of your residence if the deposition will be taken within the county of the court where the action is pending. 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 on reverse)

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE

1. I served this *Deposition Subpoena for Personal Appearance* 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. 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 (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY DRAFT V. 6 08/11/08 NOT APPROVED BY JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS	CASE NUMBER: _____

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.
 - d. This videotape deposition is intended for possible use at trial under Code of Civil Procedure section 2025.620(d).
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.
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.
- 5. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE 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.**
6. *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 or within 150 miles of your residence if the deposition will be taken within the county of the court where the action is pending. 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)

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

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* 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. 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)

SPR08-18

Discovery: Geographic Limitations on Deposition Subpoenas (revise forms SUBP-015 and SUBP-020)

Paraphrased comments are indicated by an asterisk; all other comments are verbatim.

	Commentator	Position	Comment	Committee Response
1.	Tony Klein Process Server Institute San Francisco	N	<p>1. [The proposal] Would add geographic limitation directive, as specified in the statute, on the deposition subpoena forms. I oppose the proposal because I don't think that it is necessary. The form is already quite dense, and will only encourage objections. There are other directives that could be given to a witness on a subpoena form that also make service ineffective:</p> <ul style="list-style-type: none"> • Service was not made personally • Service was made by a party • The subpoena is incomplete • The subpoena does not accompany a Notice to Consumer, or production is not required until proof of service of it is provided, if appropriate <p>2. Since the proposal adds the geographic limitation to the live body deposition subpoenas, logic follows that the <u>lack of</u> geographic limitation language should be added to the Deposition Subpoena for Production of Business Records form.</p> <p>3. If either subpoena is to be changed, I would suggest add[ing] a box on the proof of service form indicating that a Notice to Consumer form was also served, if it was served, and thus eliminating the need to type it in.</p>	<p>1. The committee disagrees. The committee believes that the possibility of increased objections resulting from deponent's reading a correct statement of the law on a subpoena form is not a good reason to omit such information.</p> <p>2. This suggestion is outside the scope of the proposal that was circulated for public comment. However, the committee will consider them in the future as time and resources permit.</p> <p>3. The <i>Notice to Consumer</i> (form SUBP-025) contains its own proof of service; hence the proof on the subpoena forms does not need to include this information.</p>
2.	Orange County Bar Association By Cathrine Castaldi President	AM	The proposed language in the form is ambiguous. We recommend changing the language in the form to read, "If you are being deposed as an individual, the deposition must take place within 75 miles of your	The circulated forms have been modified in response to this comment.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

SPR08-18

Discovery: Geographic Limitations on Deposition Subpoenas (revise forms SUBP-015 and SUBP-020)

Paraphrased comments are indicated by an asterisk; all other comments are verbatim.

	Commentator	Position	Comment	Committee Response
			residence or within 150 miles of your residence <u>if</u> the deposition will be taken within the county where the above-referenced court is located.”	
3.	Alex Scheingross San Diego	A	Excellent idea!!	The commentator’s support is noted.
4.	State Bar of California, Committee on Administration of Justice By Saul Bercovitch, Staff Attorney San Francisco	AM	CAJ supports the changes to the deposition subpoena forms, but suggests that the forms be modified so as to take into account agreements by the parties under Code of Civil Procedure section 2016.030 and court orders regarding the location of the deposition under section 2025.260. CAJ recognizes that forms do not always need to account for all possible scenarios. But because these are mandatory forms, CAJ believes the language in paragraph 3 (Form SUBP-015) and paragraph 6 (Form SUBP-020) should be consistent with the underlying statutes. CAJ also proposes a slight modification to the proposed wording, for clarity. With CAJ’s proposed changes, the language of the second to the last sentence in each paragraph would read as follows: “Unless the court orders or you agree otherwise, if you are being deposed as an individual, the deposition shall take place within 75 miles of your residence, or within 150 miles of your residence if the deposition is within the county of the court where the action is pending.”	The committee’s support is noted. The circulated forms have been modified in response to this comment.
5.	Superior Court of Los Angeles County	A	No specific comments.	The commentator’s agreement is noted.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

SPR08-18

Discovery: Geographic Limitations on Deposition Subpoenas (revise forms SUBP-015 and SUBP-020)

Paraphrased comments are indicated by an asterisk; all other comments are verbatim.

	Commentator	Position	Comment	Committee Response
6.	Superior Court of Orange County By Hon. David C. Velasquez Supervising Judge, Complex Civil Center	N	<p>1. Currently, the court sees very few motions to compel attendance at a deposition based upon disagreement over the distance to the place of the deposition in cases where the witnesses live very close to the 75 mile/150 mile limits. From an intuitive sense, I predict greater conflict for litigants arising out of failures to obey subpoenas because of disagreement over the distance to the place of the deposition if the proposed forms are modified to add the advisement concerning the distance restrictions.</p> <p>2. I believe the primary source of such disagreements will be that Code of Civil Procedure §2025.250 does not define how the distance restrictions are to be measured—is the proper measure of distance the actual distance (driving distance) or linear distance (“as the crow flies”). The resulting distance will be quite different depending on the measure used. With the current ability of the public to calculate the actual driving distance to any location (e.g., www.mapblast.com), I predict more frequent disputes caused by recalcitrant witnesses hoping to avoid the deposition process.</p> <p>I believe most judges and practitioners currently presume the proper measure of distance is “as the crow flies.” Such linear measure is the easiest to calculate in case of a dispute. In comparison, actual driving distance may vary depending upon the route the witness intends to travel—the “scenic route” versus the “short cut.” However, the law may be contrary to the common wisdom. In the case of</p>	<p>1. While the committee appreciates the comment, the committee believes that the possibility of increased objections resulting from deponents’ seeing a correct statement of the law on the subpoena forms is not a good reason to omit such information. Further, if a deponent objects, many such objections will be resolved without court involvement.</p> <p>2. The proposed revision merely states the rule as to geographic reach of a subpoena, as it currently exists in the statute. The commentator’s proposal that a rule of court be developed regarding how the statute should be interpreted, i.e., how the geographic reach of a subpoena should be measured, is beyond the scope of the proposal circulated for comment. The committee will consider this proposal as time and resources permit.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

SPR08-18

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Paraphrased comments are indicated by an asterisk; all other comments are verbatim.

	Commentator	Position	Comment	Committee Response
			<p><i>People v. Adams</i> (1987) 196 Cal.App.3d 201, 203-204, the Court of Appeal held that “driving distance” is the proper measure of distance when calculating the geographic restrictions for selection of jury venires under the provisions of former Code of Civil Procedure §203 (providing that no juror shall be required to serve more than 20 miles from home). The primary reason the court selected driving distance as the proper measure of distance is that prospective jurors (as is the case with deposition witnesses) are entitled to be paid mileage for the actual distance they travel to court. (But see contra, <i>Deloro Smelting & Refining v. Engelhand Minerals & Chemicals Corp.</i> (D. N.J. 1970) 313 F.Supp. 470, 474 [“as the crow flies” defines the limits for service of federal summons].)</p> <p>However, if the form is to be modified, I suggest the Judicial Council select a clear definition of the measure of distance to the place of the deposition. I further suggest an accompanying rule of court codifying how distance is measured. Among the issues I urge the Judicial Council to consider in crafting such a rule is whether a linear measure will be easier for the court to determine—this is a practical consideration. A more fundamental consideration is the fact that a linear measure will enlarge the group of witnesses who may be compelled to appear for deposition. Thus, from a policy standpoint, the Council should consider which method of measuring distance is more in keeping with the jurisprudential underpinnings of the</p>	

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

SPR08-18**Discovery: Geographic Limitations on Deposition Subpoenas** (revise forms SUBP-015 and SUBP-020)

Paraphrased comments are indicated by an asterisk; all other comments are verbatim.

	Commentator	Position	Comment	Committee Response
			Discovery Act: a more restrictive approach or a more open approach to discovery.	
7.	Superior Court of Riverside County By David Gutknecht Supervising Management Analyst	A	The proposed amendments to the deposition subpoenas (forms SUBP-015 and SUBP-020) would provide individuals or organizations with information on the geographic limitations on the reach of a subpoena and therefore would assist those individuals or organizations in determining whether or not a subpoena is effective.	The support for the proposal is noted.
8.	Superior Court of Sacramento County By Ed Pollard Chief Deputy Court Executive Officer	A	We agree with this proposal as written.	The support for the proposal is noted.
9.	Superior Court of San Bernardino County By Debra Meyers Director of Staff Counsel Services and Self-Help Division	A	No specific comments.	The support for the proposal is noted.
10.	Superior Court of San Diego County By Michael M. Roddy Executive Officer	A	No specific comments.	The support for the proposal is noted.
11.	Superior Court of Ventura County Self-Help Legal Access Center By Tina Rasnow Senior Attorney/Coordinator	A	This is of enormous use to SRLs [self-represented litigants] who would have no knowledge about the geographic limitations of being noticed to appear for deposition.	The support for the proposal is noted.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

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Paraphrased comments are indicated by an asterisk; all other comments are verbatim.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.