

DEPOSITIONS

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER**

JOHN SMITH,)	Case No.: 03CLXXXXX
Plaintiff,)	
)	
vs.)	NOTICE OF DEPOSITION
JANE DOE.)	
Defendant.)	
)	
)	
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To each party and to the counsel of record for each party:
You are hereby notified that the deposition of JOHN SMITH will be taken on 06/22/2014 at
2101 N. Tustin Ave. Santa Ana CA, 92705, commencing at 09:00 and continuing from day to
day thereafter until completed.

You are further notified that:
The deposition proceedings will be recorded both stenographically and by video recording.

A list of all parties or attorneys for parties on whom this Notice of Deposition is being served is
shown on the accompanying proof of service.

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Objectives

In this Module, students will:

- ❖ Familiarize themselves with the rules governing depositions**
- ❖ Learn about the various types of Depositions**
- ❖ Learn a Deposition's advantages and disadvantages**
- ❖ Learn about the timing of, parties to and limits of, Depositions**
- ❖ Examine fees and place of Deposition**
- ❖ Learn about Deposition preparation and process**
- ❖ Prepare Notice of Deposition**

DEPOSITIONS OUTLINE

- **Defined CCP §2025.010**
 - Testimony (oral or written) taken by one party on another, before trial, under oath, subject to cross-examination, and preserved in writing. Any testimony at a deposition may be admissible at trial. A non-party may be deposed through service of a deposition subpoena.
- **Advantages**
 - Can to assess the deponent and other witnesses (i.e. credibility, demeanor).
 - Expedient method of discovery.
 - The deposition can be recorded by a court stenographer, videotape or audio recording.
 - Can request the deponent to bring documents to the deposition.
 - Non-parties can be deposed and can be required to bring documents to the deposition.
 - Can impeach deponent at trial.
- **Disadvantages**
 - Expensive.
 - Must pay witness fees to non-parties.
 - Responses may not actually elicit much information.
- **Whose Deposition Can be Taken?**
 - Any party.
 - Any non-party.
- **Requesting a Deposition**
 - Written demand.
 - “Notice of Deposition” must be served on parties to the action.
 - Deposition Subpoena must be served on non-parties.
- **Timing/Hold Period CCP §§2025.210; 2025.270**
 - Plaintiff can serve notice 20 days after service of summons and complaint.
 - Defendant can serve any time after service of summons and complaint or any time after the defendant has appeared in the action.
 - Cut off: 30 days before trial; 15 days before trial for motions
 - 10 days advance notice required take a deposition. Additional time must be provided if the Notice is served by mail. (note: Subpoenas must be personally served.)
- **Number of Depositions**
 - One time for natural persons
 - Exceptions

- Corporations: You can depose an officer of the corporation as the representative of the corporation and the same officer in their individual capacity.
- **Notice of Deposition – Party CCP § 2025.220**
 - A “Notice of Deposition” must be prepared and served on a party.
 - Must provide at least 10 days notice.
 - The notice must specify the name of the party being deposed.
 - Must specify time, place, and date of the deposition.
 - Specify how the deposition will be recorded.
 - If a corporation or entity will be deposed, must state the subject matter the deposition will cover so appropriate deponent can be sent by corporation or entity.
 - If documents are requested, must list and specify the documents
- **Deposition Subpoena CCP § 2020.510**
 - Deposition Subpoena is required for non-parties.
 - Three types of Deposition Subpoenas:
 - Personal appearance
 - Personal Appearance and Records
 - Business records
 - Note: This has a cross over with the inspection demand for documents. You can either propound an inspection demand, but the responding party will have a minimum of 30 days to respond. Also, cannot demand a non-party to comply with an inspection demand. Therefore, a deposition can require a party or non-party to bring documents to a deposition within approximately 10 days.
- **Consumer Records CCP § 2025.240**
 - These are records about an individual, whether in paper, electronic, or other form, that is held by a third party (i.e. banks, escrow companies, other financial institutions. If you are requesting consumer records, special rules apply (CCP § 1985.3; § 1985.6).
 - Give notice to consumer.
 - Give notice to custodian that consumer has been notified.
 - Custodian has 15 days to produce the records.
 - Consumer has to be noticed 10 days prior to the custodian’s production date.
 - Consumer has to be served 5 days prior to the custodian being served.
- **Deposition Fees/Costs**
 - Witness fees for non-parties to the action
 - Statutory
 - \$35.00 per day plus \$0.20 per mile to and from the place of deposition (CCP § 2020.230; Gov. Code § 68093)

- o Peace Officers: Any party that subpoenas a peace officer as listed at Government Code Section 68097.1 shall reimburse the public entity the amount of one hundred and fifty dollars (\$150)
- o Expert Witnesses
 - No statutory fees must be paid. (*CCP § 2034.460*)
 - Must pay the expert's "reasonable and customary" fees for their time being deposed (*CCP § 2034.460(i)(2)*)
- o Reporter fees
 - Currently average around \$4.50 per page of transcript
 - Relatively simple depositions average 80 pages; so each deposition will cost at least \$350. A full day's deposition could run over \$1,000.
- **Place of Deposition**
 - o 75-mile rule: in California, deposition has to take place within 75 miles of deponent's residence (*CCP § 2025.250(a)*)
 - o Outside California, if a party, then apply 75-mile rule. If non-party, then apply that state's rule
 - o Corporations: 75 miles from its designated principal executive or business office in California (*CCP § 2025.250(b)*)
- **Preservation of Testimony**
 - o Deponent must take an oath
 - o Must inquire if the deponent is ill or unable to freely provide answers to questions.
 - o Explain to deponent of the deposition process.
 - o Deponent must orally answer.
 - o Deponent can be asked to provide estimates.
 - o At the end of each Deposition it must either be closed or kept open if additional testimony is needed. If additional testimony is needed, another deposition is scheduled.
 - o When deposition is closed, the court reporter must be relieved of their duties.
 - o The court reporter will mail out deposition transcripts. The Deponent generally has 30 days to correct their testimony on the transcript.
 - o Deponent must sign a deposition transcript. If they don't sign, their entire testimony will be considered true and correct.
- **Protective Order**
 - o Court order required
 - o Basis for a Protective Order:
 - Protect confidential or privileged information.
 - Purpose of deposition is to annoy and harass the deponent.
 - To request a change of the place, time or manner of deposition.

- **Motion to Compel**
 - Used by propounding party to compel deponent to answer questions and/or to attend the deposition.
 - Court Order required.

- **Motion to Quash**
 - Court order to request the court to stop or to cancel the deposition.
 - Either party can file a motion to quash.
 - Can be used against a deposition notice or a deposition subpoena.

- **Preparing for the Deposition**
 - Set the deposition date
 - Outline the issues in the case.
 - Prepare questions.
 - If possible, review background of the deponent.
 - Determine if documents are needed for the deposition.
 - Prepare all notices and/or subpoenas.
 - Contact the court reporter.
 - Ensure the location for the deposition is appropriate.

- **During the Deposition**
 - Prepare room where deposition will be held (water, arrange room, etc).
 - Inform deponent of deposition process.
 - Review the documents requested from the deponent.
 - Ask deponent about the documents and read documents into the record.
 - Opposing party can cross-examine
 - Keep the tone of the deposition professional.

 - Some of the preliminary instructions and questions given at a deposition are as follows:
 - Can you please state your full name for the record?
 - Spell your last name.
 - Have you ever had your deposition taken before?
 - How many times?
 - Why type of case?
 - Have you had an opportunity to speak with your counsel regarding today's proceedings?
 - Do understand the oath you take is the same oath you would receive in a court of law?
 - Because there is a court reporter, you must give verbal responses and only one of speaks at a time.
 - During today's proceeding, I might be asking you questions regarding dates and distances, but required to give an estimate.

- Are you ill?
 - Are you taking any medication that might affect your memory or your testimony during today's proceedings?
 - Do you have any other kind of physical or mental impairments that will limit your ability to testify at these proceedings?
- **Address Relevant Issues**
 - After these preliminary matters are addressed, the deposition can fully begin. Generally, the deponent will be asked background information regarding their age, date of birth, address, place of employment, education, etc.
 - The deponent must be asked relevant questions regarding the case.
 - The questions should be clear and simple.
 - The underlying relevant questions that can be asked includes:
 - Facts and Contentions underlying the complaint or answer.
 - Specific events and transactions
 - Description of the damages suffered.
 - Names of other witnesses.
 - Location of records
 - The deponent can respond to any question with “I don’t know” or “I don’t recall.” These are acceptable answers. It’s important to structure questions to make it difficult for the deponent to respond in that manner. If the deponent provides inconsistent responses to the same questions at trial, their testimony can be impeached based on giving prior inconsistent statements.
- **If you Represent the Deponent**
 - Thoroughly review all facts to the case.
 - Assert any appropriate 5th amendment rights.
 - Assert any and all appropriate objections.
 - Can cross examine to bolster, rehabilitate or clarify questions asked during deposition.
- **Completing the Deposition**
 - Ensure signed transcript has been returned.
 - Review testimony provided by deponent.
 - Review any corrections made by deponent.
 - Determine if other discovery must be propounded based on the testimony provided.
 - Prepare deposition summaries.
 - Lodge deposition transcript with court prior to trial.
- **Deposition Summaries**
 - After the witness has signed the deposition transcript, a summary of the deposition is generally needed to locate important testimony and information.

There are different types of deposition summaries. They include chronological summaries and subject matter summaries.

Chronological Summary

<u>Personal Background</u> Pages 2-4	Born August 30, 1960, Los Angeles, California.
<u>Education</u> Page 5, line 3-8	Bishop Montgomery H.S. 1979-82; El Camino College, 1982-1985

Subject Matter Summary

<u>Incident of car accident</u> Pages 6-7	Born August 30, 1960, Los Angeles, California.
<u>Witness at the scene of accident</u> Page 7, lines 22-28 Page 8, lines 1-6	Francisco David Mary Frances

- o These summaries are important because it provides a quick reference at to locate important information. This is especially important at trial to avoid locating the deposition testimony page by page.

CODE OF CIVIL PROCEDURE

SECTION 2025.010-2025.290

Persons and entities within the state subject to deposition

2025.010.

Any party may **obtain discovery** within the scope delimited by Chapter 2 (commencing with Section 2017.010) and Chapter 3 (commencing with Section 2017.710), and subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), **by taking** in California the **oral deposition of any person, including any party to the action**. The person deposed may be a **natural person, an organization** such as a public or private corporation, a partnership, an association, or a governmental agency.

Service of notice; time allowed

2025.210.

Subject to Sections 2025.270 and 2025.610, an oral deposition may be taken as follows:

- (a) The **defendant may serve a deposition notice without leave of court at any time after** that defendant has been served or has appeared in the action, whichever occurs first.
- (b) The **plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant**. On motion with or without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date.

Notice of Deposition must include

2025.220.

(a) A party desiring to take the oral deposition of any person shall give **notice in writing**. 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 Section 2025.270, 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** by the party noticing the deposition **to record the testimony by audio or video technology**, in addition to recording the testimony by the **stenographic method** as required by Section 2025.330 and any intention to record the testimony by stenographic method through the instant visual display of the testimony. If the deposition will be conducted using instant visual display, 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**. **Any party or attorney requesting the provision of the instant visual display of the testimony, or rough draft transcripts, shall pay the reasonable cost of those services**, which may be no greater than the costs charged to any other party or attorney.

(6) **Any intention to reserve the right to use at trial a video recording of the deposition testimony of a treating or consulting physician or of any expert witness** under subdivision (d) of Section (eliminate space)2025.620. In this event, the operator of the video 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.

(7) The **form in which any electronically** stored information is to be produced, **if a particular form is desired**.

(b) **Notwithstanding subdivision (a)**, where under Article 4 (commencing with Section 2020.410) only the production by a nonparty of business records for copying is desired, a copy of the deposition subpoena shall serve as the notice of deposition.

Deponent is not a natural person

2025.230.

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 designate** and produce at the deposition those of its officers, directors, managing agents, employees, or **agents who are most qualified to**

testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent.

NOTE: This occurs when deposing an entity like a corporation or organization.

Notice & Records

2025.240.

(a) The party who prepares a notice of deposition shall **give the notice to every other party who has appeared in the action**. The deposition notice, or the accompanying proof of service, **shall list all the parties or attorneys for parties on whom it is served**.

(b) **If**, as defined in subdivision (a) of Section 1985.3 or subdivision (a) of Section 1985.6, **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 or employment records of an employee**, the subpoenaing party **shall serve on that consumer or employee all of the following:**

(1) **A notice of the deposition.**

(2) **The notice of privacy rights specified in subdivision (e) of Section 1985.3 or in subdivision (e) of Section 1985.6.**

(3) **A copy of the deposition subpoena.**

(c) **If the attendance of the deponent is to be compelled by service of a deposition subpoena under Chapter 6 (commencing with Section 2020.010), an identical copy of that subpoena shall be served with the deposition notice.**

Location of deposition; mileage restrictions

2025.250.

(a) **Unless the court orders otherwise** under Section 2025.260, **the deposition of a natural person**, whether or not a party to the action, **shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence.**

(b) **The deposition of an organization that is a party to the action** shall be taken at a place that is, at the option of the party giving notice of the deposition, **either within 75**

miles of the organization's principal executive or business office in California, or within the county where the action is pending and within 150 miles of that office.

(c) Unless the organization consents to a more distant place, **the deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in California.**

(d) **If an organization has not designated a principal executive or business office in California,** the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, **either within the county where the action is pending, or within 75 miles of any executive or business office in California of the organization.**

Location & Exemption from mileage restrictions

2025.260.

(a) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a **motion for an order that the deponent attend for deposition at a place that is more distant** than that permitted under Section 2025.250. This motion shall be accompanied by a meet and confer declaration under Section 2016.040.

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

(1) **Whether the moving party selected the forum.**

(2) **Whether the deponent will be present to testify at the trial of the action.**

(3) **The convenience of the deponent.**

(4) **The feasibility of conducting the deposition by written questions** under Chapter 11 (commencing with Section 2028.010), **or of using a discovery method other than a deposition.**

(5) **The number of depositions sought to be taken** at a place more distant than that permitted under Section 2025.250.

(6) **The expense to the parties of requiring the deposition to be taken within the distance permitted under Section 2025.250.**

(7) **The whereabouts of the deponent at the time for which the deposition is scheduled.**

(c) **The order may be conditioned on the advancement by the moving party of the reasonable expenses and costs to the deponent for travel to the place of deposition.**

(d) **The court shall impose a monetary sanction** under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who **unsuccessfully makes or opposes** a motion to increase the travel limits for a party deponent, **unless** it finds that the one subject to the sanction **acted with substantial justification** or that **other circumstances make the imposition of the sanction unjust.**

Date of deposition

2025.270.

(a) An oral deposition shall be scheduled for a date at **least 10 days after service of the deposition notice.**

(b) Notwithstanding subdivision (a), in an **unlawful detainer** action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, an oral deposition shall be scheduled for a date **at least five days after service of the deposition notice, but not later than five days before trial.**

(c) Notwithstanding subdivisions (a) and (b), if, as defined in Section 1985.3 or 1985.6, 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 or employment records of an employee, **the deposition shall be scheduled for a date at least 20 days** after issuance of that subpoena.

(d) On motion or ex parte application of any party or deponent, **for good cause shown, the court may shorten or extend the time** for scheduling a deposition, or **may stay its taking** until the determination of a motion for a protective order under Section 2025.420.

NOTE: As with other forms of discovery, actions for Unlawful Detainer have special rules.

Notice & Production

2025.280.

(a) The **service of a deposition notice** under Section 2025.240 **is effective to require any deponent who is a party to the action** or an officer, director, managing agent, or

employee of a party **to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.**

(b) **The attendance and testimony of any other deponent**, as well as the production by the deponent of any document or tangible thing for inspection and copying, **requires the service on the deponent of a deposition subpoena** under Chapter 6 (commencing with Section 2020.010).

Time limits of depositions

2025.290.

(a) Except as provided in subdivision (b), or by any court order, including a case management order, **a deposition examination of the witness by all counsel, other than the witness' counsel of record, shall be limited to seven hours of total testimony.** The court shall **allow additional time**, beyond any limits imposed by this section, **if needed** to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

(b) **This section shall not apply under any of the following circumstances:**

(1) If the **parties have stipulated** that this section will not apply to a specific deposition or to the entire proceeding.

(2) To any deposition of a **witness designated as an expert** pursuant to Sections 2034.210 to 2034.310, inclusive.

(3) **To any case designated as complex** by the court pursuant to Rule 3.400 of the California Rules of Court, **unless** a licensed physician attests in a declaration served on the parties that the deponent suffers from an illness or condition that raises substantial medical doubt of survival of the deponent beyond six months, **in which case** the deposition examination of the witness by all counsel, other than the witness' counsel of record, shall be limited to two days of no more than seven hours of total testimony each day, or 14 hours of total testimony.

(4) To any case **brought by an employee** or applicant for employment against an employer for acts or omissions arising out of or **relating to the employment relationship.**

(5) To any deposition of a person who is **designated as the most qualified person to be deposed** under Section 2025.230.

(6) To **any party who appeared in the action after the deposition has concluded**, in which case the new party may notice another deposition subject to the requirements of this section.

(c) It is the intent of the Legislature that any exclusions made by this section shall not be construed to create any presumption or any substantive change to existing law relating to the appropriate time limit for depositions falling within the exclusion. **Nothing in this section shall be construed to affect the existing right of any party to move for a protective order** or the court's discretion to make any order that justice requires to limit a deposition in order to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, oppression, undue burden, or expense.

CODE OF CIVIL PROCEDURE

SECTION 2025.310-2025.340

Use of telephone or other remote electronic means

2025.310.

(a) **A person may take, and any person other than the deponent may attend, a deposition by telephone or other remote electronic means.**

(b) The court may expressly provide that **a nonparty deponent may appear at the deposition by telephone** if it finds there is **good cause and no prejudice to any party**. **A party deponent shall appear at the deposition in person and be in the presence of the deposition officer.**

(c) The procedures to implement this section shall be established by court order in the specific action or proceeding or by the California Rules of Court.

THE DEPOSITION OFFICER

2025.320.

Except as provided in Section 2020.420, the deposition shall be **conducted under the supervision of an officer who is authorized to administer an oath** and is subject to all of the following requirements:

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

(b) **Services and products offered or provided by the deposition officer** or the entity providing the services of the deposition officer to any party or to any party's attorney or third party who is financing all or part of the action **shall be offered to all parties or their attorneys attending the deposition**. No service or product may be offered or provided by the deposition officer or by the entity providing the services of the deposition officer to any party or any party's attorney or third party who is financing all or part of the action unless the service or product is offered or provided to all parties or their attorneys attending the deposition. **All services and products offered or provided shall be made available at the same time to all parties or their attorneys**.

(c) **The deposition officer** or the entity providing the services of the deposition officer **shall not provide** to any party or any party's attorney or third party who is financing all or part of the action any service or product consisting of **the deposition officer's notations or comments regarding the demeanor of any witness, attorney, or party present at the deposition**. The deposition officer or entity providing the services of the deposition officer **shall not collect any personal identifying information about the witness as a service or product** to be provided to any party or third party who is financing all or part of the action.

(d) **Upon the request of any party** or any party's attorney attending a deposition, **any party** or any party's attorney attending the deposition **shall enter in the record of the deposition all services and products** made available to that party or party's attorney or third party who is financing all or part of the action **by the 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.

(e) **Any objection to the qualifications** of the deposition officer **is 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.

(f) **Violation of this section** by any person may result in a **civil penalty of up to five thousand dollars** (\$5,000) imposed by a court of competent jurisdiction.

Oath & Recording & Questioning the deposition officer

2025.330.

(a) **The deposition officer shall put the deponent under oath or affirmation.**

(b) **Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically.** If taken stenographically,

it shall be by a person certified pursuant to Article 3 (commencing with Section 8020) of Chapter 13 of Division 3 of the Business and Professions Code.

(c) **The party noticing the deposition may also record the testimony by audio or video** technology 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 an audio or video record of the deposition**, provided that the 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 make an audio or video record** of 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 Section 2025.240, and on any deponent whose attendance is being compelled by a deposition subpoena under Chapter 6 (commencing with Section 2020.010). If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011.

(d) Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.

(e) **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.

Audio/Video Recordation & Requirements & Transcript

2025.340.

If a deposition is being recorded by means of **audio or video technology** by, or at the direction of, any party, 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 section. Except as provided in subdivision (c), **the operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer**.

(c) If a video recording of deposition testimony is to be **used under subdivision (d) of Section 2025.620**, **the operator** of the recording equipment 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, **unless** all parties

attending the deposition agree on the record to waive these qualifications and restrictions.

(d) **Services and products offered or provided by the deposition officer** or the entity providing the services of the deposition officer to any party or to any party's attorney or third party who is financing all or part of the action **shall be offered or provided to all parties or their attorneys attending the deposition**. No service or product may be offered or provided by the deposition officer or by the entity providing the services of the deposition officer to any party or any party's attorney or third party who is financing all or part of the action unless the service or product is offered or provided to all parties or their attorneys attending the deposition. **All services and products offered or provided shall be made available at the same time to all parties or their attorneys**.

(e) **The deposition officer** or the entity providing the services of the deposition officer **shall not provide** to any party or any other person or entity **any service or product consisting of the deposition officer's notations or comments regarding the demeanor of any witness, attorney, or party present at the deposition**. The deposition officer or the entity providing the services of the deposition officer **shall not collect any personal identifying information about the witness as a service or product** to be provided to any party or third party who is financing all or part of the action.

(f) **Upon the request of any party** or any party's attorney attending a deposition, **any party** or any party's attorney attending the deposition **shall enter in the record of the deposition all services and products** made available to that party or party's attorney or third party who is financing all or part of the action **by the 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 that the unrepresented party may request this statement.

(g) The **operator shall not distort** the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

(h) **The deposition shall begin with an oral or written statement** on camera or on the audio recording that includes the **operator's name and business address**, the **name and business address of the operator's employer**, the **date, time, and place of the deposition**, the **caption of the case**, the **name of the deponent**, a **specification of the party** on whose behalf the deposition is being taken, and **any stipulations by the parties**.

(i) **Counsel for the parties shall identify themselves** on camera or on the audio recording.

(j) The **oath** shall be administered to the deponent on camera or on the audio recording.

(k) **If the length of a deposition requires the use of more than one unit of tape or electronic storage, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audio recording.**

(l) **At the conclusion of a deposition, a statement shall be made on camera or on the audio recording that the deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audio or video recording and the exhibits, or concerning other pertinent matters.**

(m) **A party intending to offer an audio or video recording of a deposition in evidence under Section 2025.620 shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered. That notice shall be given within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the recording. Objections to all or part of the deposition shall be made in writing.** The court may permit further designations of testimony and objections as justice may require. **With respect to those portions of an audio or video record of deposition testimony that are not designated by any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition recording be prepared for use at the trial or hearing. The original audio or video record of the deposition shall be preserved unaltered.** If no stenographic record of the deposition testimony has previously been made, the party offering an audio or video recording of that testimony under Section 2025.620 shall accompany that offer with a stenographic transcript prepared from that recording.

CODE OF CIVIL PROCEDURE SECTION 2025.410-2025.480

Time to object ; waiver; motion to stay; sanctions

2025.410.

(a) **Any party served with a deposition notice that does not comply with Article 2 (commencing with Section 2025.210) waives any error or irregularity unless that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled,** on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served.

(b) If an objection is made three calendar days before the deposition date, the objecting party shall make personal service of that objection pursuant to Section 1011 on the

party who gave notice of the deposition. **Any deposition taken after the service of a written objection shall not be used against the objecting party** under Section 2025.620 **if the party did not attend the deposition and if the court determines that the objection was a valid one.**

(c) In addition to serving this written objection, **a party may also move for an order staying the taking of the deposition and quashing the deposition notice.** This motion shall be accompanied by a meet and confer declaration under Section 2016.040. The taking of the deposition is stayed pending the determination of this motion.

(d) **The court shall impose a monetary sanction** under Chapter 7 (commencing with Section 2023.010) **against any party**, person, or attorney **who unsuccessfully makes or opposes** a motion to quash a deposition notice, **unless** it finds that the one subject to the sanction acted with **substantial justification** or that other **circumstances make the imposition of the sanction unjust.**

(e)(1) **Notwithstanding subdivision (d)**, absent exceptional circumstances, the court **shall not impose sanctions** on any party, person, or attorney for **failure to provide electronically stored information** that has been lost, damaged, altered, or overwritten as the result of the routine, **good faith operation of an electronic information system.**

(2) **This subdivision shall not be construed to alter any obligation to preserve discoverable information.**

Protective orders

2025.420.

(a) **Before, during, or after** a deposition, any party, any deponent, or any other affected natural person or organization may promptly **move for a protective order.** The motion shall be accompanied by a meet and confer declaration under Section 2016.040.

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

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

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

(3) **That a video recording** of the deposition testimony of a treating or consulting physician or of any expert witness, intended for possible use at trial under subdivision (d) of Section 2025.620, **be postponed until the moving party has had an adequate opportunity to prepare**, by discovery deposition of the deponent, or other means, **for cross-examination**.

(4) That the **deposition be taken at a place other than that specified in the deposition notice**, if it is within a distance permitted by Sections 2025.250 and 2025.260.

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

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

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

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

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

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

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

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

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

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

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

(16) **That examination of the deponent be terminated**. If an order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

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

(d) If the **party or affected person** from whom discovery of **electronically stored information** is sought establishes that the information is from a source that is **not reasonably accessible because of undue burden or expense**, the court may nonetheless **order discovery** if the demanding party shows **good cause**, subject to any limitations imposed under **subdivision (f)**.

....

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

(h) **The court shall impose a monetary sanction** under Chapter 7 (commencing with Section 2023.010) **against any party**, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, **unless it finds** that the one subject to the sanction **acted with substantial justification** or that **other circumstances make the imposition of the sanction unjust**.

...

NOTE: Omitted subsections (e) and (f)(1)-(4) are identical to CCP 2025.480. (f) and (g)(1)-(4).

- Omitted subsection (i)(1) and (2) are identical to CCP 2025.410. (e)(1) and (2).

DEPOSING PARTY FAILS TO ATTEND

2025.430.

If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, **unless it finds** that the one subject to the sanction **acted with substantial justification** or that **other circumstances make the imposition of the sanction unjust**.

Deponent fails to appear or refuses to give oath

2025.440.

(a) **If a deponent does not appear** for a deposition **because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction** under Chapter 7 (commencing with Section 2023.010)

against that party, or the attorney for that party, or both, **in favor of any other party who**, in person or by attorney, **attended at the time and place specified in the deposition notice** in the expectation that the deponent's testimony would be taken, **unless the court finds** that the one subject to the sanction **acted with substantial justification** or that **other circumstances make the imposition of the sanction unjust**.

(b) **If a deponent on whom a deposition subpoena has been served fails to attend** a deposition or refuses to be sworn as a witness, **the court may** impose on the deponent the **sanctions** described in Section 2020.240.

Order to compel

2025.450.

(a) If, after service of a deposition notice, **a party to the action** or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under Section 2025.230, **without having served a valid objection** under Section 2025.410, **fails to appear** for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice **may move for an order compelling the deponent's attendance** and testimony, and the production for inspection of any document or tangible thing described in the deposition notice.

(b) **A motion under subdivision (a) shall comply with both of the following:**

(1) The motion **shall set forth specific facts showing good cause** justifying the production for inspection of any document or tangible thing described in the deposition notice.

(2) The motion **shall be accompanied by a meet and confer declaration** under Section 2016.040, **or**, when the deponent fails to attend the deposition and produce the documents or things described in the deposition notice, **by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance.**

....

(g)(1) If a motion under subdivision (a) is granted, the court **shall impose a monetary sanction under Chapter 7** (commencing with Section 2023.010) in favor of the party who noticed the deposition and **against the deponent** or the party with whom the deponent is affiliated, **unless the court finds** that the one subject to the sanction **acted with substantial justification** or that **other circumstances make the imposition of the sanction unjust**.

(2) **On motion of any other party who**, in person or by attorney, **attended** at the time and place specified in the deposition notice in the expectation that the deponent's

testimony would be taken, **the court shall impose a monetary sanction** under Chapter 7 (commencing with Section 2023.010) in favor of that party and **against the deponent** or the party with whom the deponent is affiliated, **unless the court finds** that the one subject to the sanction **acted with substantial justification** or that **other circumstances make the imposition of the sanction unjust**.

(h) **If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction** under Chapter 7 (commencing with Section 2023.010) against that party deponent or against the party with whom the deponent is affiliated. **In lieu of, or in addition to, this sanction, the court may impose a monetary sanction under Chapter 7** (commencing with Section 2023.010) against that deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order.

....

NOTE: Omitted subsections (c), (d), (e) and (f)(1)-(4) are substantially similar to CCP 2025.480. (d), (e), (f) and (g)(1)-(4). These omitted subsections substitute the word “deponent” in CCP 2025 with the words “party or party-affiliated deponent.”

- Omitted subsection (i)(1) and (2) are identical to CCP 2025.410. (e)(1) and (2).

Waiver of objections

2025.460.

(a) The **protection of information** from discovery on the ground that it is **privileged** or that it is a **protected work product** under Chapter 4 (commencing with Section 2018.010) **is waived unless a specific objection to its disclosure is timely made during the deposition**.

(b) **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 Sections 2025.420 and 2025.470, **the deposition shall proceed subject to the objection**.

(c) **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.

(d) 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 Section 2025.480.

(e) If a **deponent fails to answer any question or to produce any document**, electronically stored information, 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 Section 2025.480.

(f) **Notwithstanding subdivision (a)**, if a deponent notifies the party that took a deposition that electronically stored information produced pursuant to the deposition notice or subpoena is subject to a claim of privilege or of protection as attorney work product, as described in Section 2031.285, the provisions of Section 2031.285 shall apply.

Suspension of the deposition

2025.470.

The **deposition officer may not suspend** the taking of testimony without the stipulation of all parties present **unless any party attending the deposition**, including the deponent, **demands that the deposition officer suspend taking the testimony to enable** that party or deponent to move for a **protective order** under Section 2025.420 **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.**

Motion to compel answers or produce documents

2025.480.

(a) **If a deponent fails to answer** any question or to produce any document, electronically stored information, or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for **an order compelling that answer or production**.

(b) This motion shall be made **no later than 60 days after** the completion of the record of the deposition, and shall be accompanied by a meet and confer declaration under Section 2016.040.

(c) **Notice of this motion shall be given to all parties and to the deponent** either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice.

(d) In a motion under subdivision (a) relating to the production of electronically stored information, **the deponent objecting to or opposing the production**, inspection, copying, testing, or sampling of electronically stored information on the basis that the information is from a source that is not reasonably accessible because of the undue burden or expense **shall bear the burden of demonstrating that the information is from a source that is not reasonably accessible because of undue burden or expense**.

(e) If the deponent from whom discovery of electronically stored information is sought **establishes that the information is from a source that is not reasonably accessible** because of the undue burden or expense, **the court may nonetheless order discovery if the deposing party shows good cause, subject to any limitations imposed under subdivision (g)**.

(f) **If the court finds** good cause for the production of electronically stored information from a source that is not reasonably accessible, **the court may set conditions for the discovery of the electronically stored information, including allocation of the expense of discovery**.

(g) **The court shall limit** the frequency or extent of discovery of electronically stored information, **even from a source that is reasonably accessible**, if the court determines that any of the following conditions exists:

(1) **It is possible to obtain the information from some other source that is more convenient, less burdensome, or less expensive.**

(2) The discovery sought is **unreasonably cumulative or duplicative**.

(3) The party seeking discovery has had **ample opportunity by discovery** in the action **to obtain the information** sought.

(4) The **likely burden** or expense of the proposed discovery **outweighs the likely benefit**, taking into account the **amount in controversy**, the **resources of the parties**, the **importance of the issues in the litigation**, and the **importance of the requested discovery in resolving the issues**.

(h) **Not less than five days prior to the hearing** on this motion, the moving party shall **lodge with the court a certified copy of any parts** of the stenographic transcript of the deposition **that are relevant to the motion**. If a deposition is recorded by audio or video technology, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion.

(i) If the court determines that the answer or production sought is **subject to discovery**, **it shall order that the answer be given** or the production be made on the resumption of the deposition.

(j) **The court shall impose a monetary sanction** under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who **unsuccessfully makes or opposes** a motion to compel an answer or production, **unless it finds** that the one subject to the sanction **acted with substantial justification** or that **other circumstances make the imposition of the sanction unjust**.

(k) **If a deponent fails to obey an order entered under this section, the failure may be considered a contempt of court**. In addition, **if the disobedient deponent is a party to the action** or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an **issue sanction**, an **evidence sanction**, or a **terminating sanction** under Chapter 7 (commencing with Section 2023.010). **In lieu of or in addition to this sanction**, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against that party deponent or against any party with whom the deponent is affiliated.

....

NOTE: Omitted subsection (l)(1) and (2) are identical to CCP 2025.410. (e)(1) and (2).

CODE OF CIVIL PROCEDURE

SECTION 2025.510-2025.570

Copies of depositions

2025.510.

(a) Unless the parties agree otherwise, the testimony at any **deposition recorded by stenographic means shall be transcribed.**

(b) The **party noticing the deposition shall bear the cost of that transcription, unless** the court, on motion and for good cause shown, orders that the cost be borne or shared by another party.

(c) Notwithstanding subdivision (b) of Section 2025.320, any other party or the deponent, at the expense of that **party or deponent, may obtain a copy of the transcript.**

(d) **If the deposition officer receives a request** from a party for an original or a copy of the deposition transcript, or any portion thereof, **and the full or partial transcript will be available to that party prior to the time the original or copy would be available to any other party,** the deposition officer shall immediately notify all other parties attending the deposition of the request, and shall, **upon request by any party other than the party making the original request, make that copy of the full or partial deposition transcript available** to all parties at the same time.

(e) **Stenographic notes of depositions shall be retained** by the reporter for a period of **not less than eight years** from the date of the deposition, where no transcript is produced, and **not less than one year** from the date on which the transcript is produced. Those notes may be either on paper or electronic media, as long as it allows for satisfactory production of a transcript at any time during the periods specified.

(f) **At the request of any other party** to the action, including a party who did not attend the taking of the deposition testimony, **any party who records or causes the recording of that testimony by means of audio or video technology shall promptly do both of the following:**

(1) **Permit that other party to hear the audio recording or to view the video recording.**

(2) **Furnish a copy** of the audio or video recording to that other party **on receipt of payment of the reasonable cost** of making that copy of the recording.

(g) If the testimony at the deposition is recorded both stenographically, and by audio or video technology, the **stenographic transcript is the official record** of that testimony for the purpose of the trial and any subsequent hearing or appeal.

(h) (1) **The requesting attorney** or party appearing in propria persona **shall timely pay the deposition officer** or the entity providing the services of the deposition officer for the transcription or copy of the transcription described in subdivision(b) or (c), and any other deposition products or services that are requested either orally or in writing.

(2) **This subdivision shall apply unless** responsibility for the payment is otherwise provided by law or unless the deposition officer or entity is notified in writing at the time the services or products are requested that the party or another identified person will be responsible for payment.

(3) This subdivision **does not prohibit or supersede** an agreement between an attorney and a party allocating responsibility for the payment of deposition costs to the party.

(4) The requesting attorney or party appearing in propria persona, **upon the written request of a deposition officer** who has obtained a final judgment for payment of services provided pursuant to this subdivision, **shall provide to the deposition officer an address** that can be used to effectuate service for the purpose of Section 708.110 in the manner specified in Section 415.10.

(i) **For purposes of this section, "deposition product or service" means any product or service** provided in connection with a deposition that qualifies as **shorthand reporting**, as described in Section 8017 of the Business and Professions Code, and any product or service derived from that shorthand reporting.

Changing, approving & failing to approve the transcript

2025.520.

(a) If the deposition testimony is stenographically recorded, the deposition officer shall send **written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony for each session of the deposition is available for reading, correcting, and signing**, unless the deponent and the attending parties agree on the record that the reading, correcting, and signing of the transcript of the testimony will be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time.

(b) For **30 days following each notice** under subdivision (a), unless the attending parties and the deponent agree on the record or otherwise in writing to a longer or shorter time period, **the deponent may change the form or the substance of the answer to a question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it.**

(c) Alternatively, within this same period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript **by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested**. A copy of that letter shall be sent by first-class mail to all parties attending the deposition.

(d) For **good cause** shown, the court may **shorten the 30-day period** for making changes, approving, or refusing to approve the transcript.

(e) **The deposition officer shall indicate on the original of the transcript**, if the deponent has not already done so at the office of the deposition officer, **any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve**, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person.

(f) **If the deponent fails or refuses to approve the transcript within the allotted period, the deposition shall be given the same effect as though it had been approved**, subject to any changes timely made by the deponent.

(g) Notwithstanding subdivision (f), **on a reasonable motion to suppress** the deposition, accompanied by a meet and confer declaration under Section 2016.040, **the court may determine that the reasons given** for the failure or refusal to approve the transcript **require rejection** of the deposition in whole or in part.

(h) **The court shall impose a monetary sanction** under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who **unsuccessfully makes or opposes** a motion to suppress a deposition under this section, **unless the court finds** that the one subject to the sanction acted with **substantial justification** or that **other circumstances make the imposition of the sanction unjust**.

Changing, approving & failing to approve the video

2025.530.

(a) **If there is no stenographic transcription of the deposition**, the deposition officer shall send **written notice** to the deponent and to all parties attending the deposition **that the audio or video recording** made by, or at the direction of, any party, **is available for review**, unless the deponent and all these parties agree on the record to waive the hearing or viewing of the audio or video recording of the testimony.

(b) **For 30 days following a notice** under subdivision (a), the deponent, either in person or by signed letter to the deposition officer, **may change the substance of the answer** to any question.

(c) The deposition officer shall set forth **in a writing** to accompany the recording **any changes made by the deponent**, as well as either the deponent's signature identifying the deposition as the deponent's own, or a statement of the deponent's failure to supply the signature, or to contact the officer within the period prescribed by subdivision (b).

(d) **When a deponent fails to contact the officer within the period prescribed by subdivision (b), or expressly refuses by a signature to identify the deposition as the deponent's own, the deposition shall be given the same effect as though signed.**

(e) Notwithstanding subdivision (d), **on a reasonable motion to suppress the deposition**, accompanied by a meet and confer declaration under Section 2016.040, the court may determine that the reasons given for the refusal to sign **require rejection of the deposition** in whole or in part.

(f) **The court shall impose a monetary sanction** under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who **unsuccessfully makes or opposes a motion** to suppress a deposition under this section, **unless it finds** that the one subject to the sanction acted with **substantial justification** or that **other circumstances make the imposition of the sanction unjust.**

Certification of deposition record

2025.540.

(a) **The deposition officer shall certify** on the transcript of the deposition, or in a writing accompanying an audio or video record of deposition testimony, as described in Section 2025.530, **that the deponent was duly sworn** and that the transcript or recording is a **true record of the testimony given.**

(b) When prepared as a **rough draft** transcript, the transcript of the deposition **may not be certified and may not be used, cited, or transcribed as the certified transcript of the deposition proceedings.** The rough draft transcript may not be cited or used in any way or at any time to rebut or contradict the certified transcript of deposition proceedings as provided by the deposition officer.

Original certified transcript

2025.550.

(a) **The certified transcript** of a deposition **shall not be filed with the court. Instead,** the deposition officer **shall securely seal that transcript** in an envelope or package

endorsed with the title of the action and marked: "Deposition of (here insert name of deponent)," and shall promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

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

Audio or video recording of deposition

2025.560.

(a) **An audio or video recording** of deposition testimony made by, or at the direction of, any party, including a certified recording made by an operator qualified under subdivisions (b) to (f), inclusive, of Section 2025.340, **shall not be filed with the court. Instead, the operator shall retain custody of that recording and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the recording and the integrity of the testimony and images it contains.**

(b) **At the request of any party** to the action, including a party who did not attend the taking of the deposition testimony, or at the request of the deponent, **that operator shall promptly do both of the following:**

(1) **Permit the one making the request to hear or to view** the recording on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the recording.

(2) **Furnish a copy of the audio or video** recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the recording.

(c) The attorney or operator who has custody of an audio or video recording of deposition testimony made by, or at the direction of, any party, **shall retain custody of it until six months after final disposition of the action.** At that time, **the audio or video recording may be destroyed or erased, unless the court,** on motion of any party and for good cause shown, **orders that the recording be preserved for a longer period.**

Third-party request where original in possession of deposition officer

2025.570.

(a) **Notwithstanding subdivision (b) of Section 2025.320**, unless the court issues an order to the contrary, **a copy** of the transcript of the deposition testimony made by, or at the direction of, any party, or an audio or video recording of the deposition testimony, if still in the possession of the deposition officer, **shall be made available by the deposition officer to any person requesting a copy**, on payment of a reasonable charge set by the deposition officer.

(b) **If a copy is requested** from the deposition officer, the **deposition officer shall mail a notice** to all parties attending the deposition and to the deponent at the deponent's last known address advising them of all of the following:

(1) **The copy is being sought.**

(2) **The name of the person requesting the copy.**

(3) **The right to seek a protective order under Section 2025.420.**

(c) **If a protective order is not served on the deposition officer within 30 days** of the mailing of the notice, **the deposition officer shall make the copy available to the person requesting the copy.**

(d) **This section shall apply only** to recorded testimony taken at depositions occurring on or after January 1, 1998.

CODE OF CIVIL PROCEDURE

SECTION 2025.610-2025.620

Subsequent deposition of deponents

2025.610.

(a) **Once any party has taken the deposition of any natural person**, including that of a party to the action, **neither the party who gave, nor any other party who has been served with a deposition notice pursuant to Section 2025.240 may take a subsequent deposition of that deponent.**

(b) **Notwithstanding subdivision (a)**, for good cause shown, **the court may grant leave to take a subsequent deposition**, and **the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken.**

(c) **This section does not preclude taking one subsequent deposition of a natural person who has previously been examined under either or both of the following circumstances:**

(1) The person was examined **as a result of that person's designation to testify on behalf of an organization under Section 2025.230.**

(2) The person was examined pursuant to a court order under Section 485.230, **for the limited purpose of discovering pursuant to Section 485.230 the identity, location, and value of property in which the deponent has an interest.**

(d) **This section does not authorize the taking of more than one subsequent deposition for the limited purpose of Section 485.230.**

Use of deposition at trial or other hearings

2025.620.

At the trial or any other hearing in the action, **any part or all of a deposition may be used against any party who was present or represented** at the taking of the deposition, **or who had due notice of the deposition and did not serve a valid objection** under Section 2025.410, so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:

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

(b) **An adverse party may use for any purpose, a deposition of a party to the action**, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under Section 2025.230 of a party. **It is not ground for objection** to the use of a deposition of a party under this subdivision by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.

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

(1) **The deponent resides more than 150 miles** from the place of the trial or other hearing.

(2) **The deponent**, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, **is any of the following:**

(A) **Exempted or precluded** on the ground of **privilege** from testifying concerning the matter to which the deponent's testimony is relevant.

(B) **Disqualified from testifying.**

(C) **Dead or unable to attend or testify** because of existing physical or mental illness or infirmity.

(D) **Absent from the trial** or other hearing and **the court is unable to compel** the deponent's attendance by its process.

(E) **Absent** from the trial or other hearing **and the proponent of the deposition has exercised reasonable diligence** but has been **unable to procure** the deponent's **attendance** by the court's process.

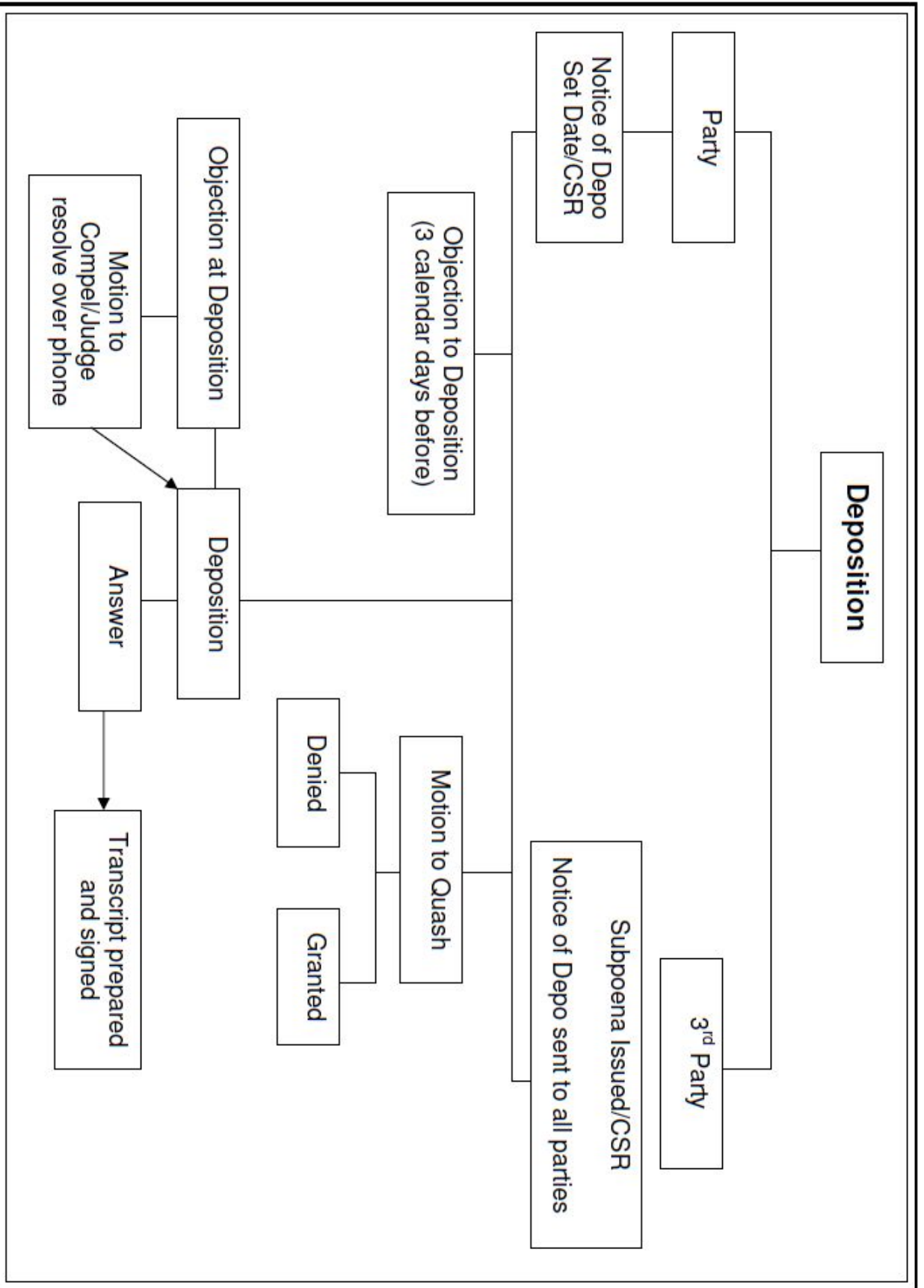
(3) **Exceptional circumstances** exist that make it desirable **to allow the use of any deposition** in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

(d) **Any party may use a video recording of the deposition testimony of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice** under Section 2025.220 **reserved the right** to use the deposition at trial, and if that party has complied with subdivision (m) of Section 2025.340.

(e) Subject to the requirements of this chapter, **a party may offer in evidence all or any part of a deposition**, and if the party introduces only part of the deposition, **any other party may introduce any other parts that are relevant to the parts introduced.**

(f) **Substitution of parties does not affect the right to use depositions previously taken.**

(g) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, **all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that subsequent action.** A deposition previously taken may also be used as permitted by the Evidence Code.



DEPOSITIONS REVIEW QUESTIONS

- What is the definition of a deposition?
- What are the advantages of a deposition?
- What are the disadvantages of a deposition?
- Whose deposition can be taken?
- What is the first date a plaintiff can serve a notice of deposition on a defendant?
- When can the defendant serve a notice of deposition on a plaintiff?
- Is there a limit to the number of depositions?
 - If so, what is the number?
 - Are there any exceptions?
- What are the contents that must be included in a notice of deposition?
- Is a subpoena required?
 - If so, for who?
- What are the three different types of subpoenas?
- How must a subpoena be served?
- Are there any fees associated to depose a non-party witness?
- What are the special steps required to obtain consumer records?
- What are some of the rules that determine where the deposition can be held?

Objections to Depositions

Proper or Grounds for Objection:

- Privilege or work product (§§8:109 ff.)
- Lack of relevancy to subject matter
 - Not reasonably calculated to lead to discovery of admissible evidence (difficult to sustain because of the broad scope of discovery permitted; see §§8:66 ff.)
- Defects in deposition notice (§§8:483 ff., 8:507 ff.)
- Defects in oath or affirmation administered (§§8:654)
- Misconduct by a party, counsel or deposition officer
 - Ex: abusive questioning; see (§§8:712 ff.)
- Objection as to Form of questions or answer at a deposition
 - To avoid waiver, the objection must be made on the record at the deposition (see §§8:725). [CCP § 2025.460(b)]
 - Ex. of objection to a question on the ground that it:
 - is ambiguous, uncertain or not readily understood;
 - is compound;
 - calls for narration or lengthy explanation;
 - calls for speculation and conjecture
 - is argumentative;
 - is leading and suggestive to questioner's own client or witness

Improper Questions Relating to a Party's Legal CONTENTIONS [8:723]:

- It is improper to ask a party deponent to state or explain the legal contentions in the case; or designate documents or evidence supporting same. *Rifkind v. Sup. Ct. (Good)* 22 CA.4th 1255, 1259 (1994).
 - Examples:
 - “Do you contend X’s conduct was negligent (legal conclusion)?”
 - “If you do, state all facts, list all witnesses, and identify and describe all documents that support your contention that X was negligent.” [See *Rifkind v. Sup. Ct. (Good)* 22 CA.4th 1255, 1259 (1994).]
 - Contentions are proper in written interrogatories (not depositions) because interrogatory answers are prepared with the assistance of counsel [8:724]

**References are to The Rutter Group, Civil Procedure Before Trial 2012

Unobjectionable Documents Reviewed [8:724.3]

- Opposing counsel cannot properly refuse to produce documents used to refresh deponent's recollection in preparation for the deposition
 - If a witness "either while testifying or prior thereto, uses a writing to refresh his memory with respect to any matter about which he testifies, such writing must be produced . . . at the request of an adverse party . . ." [Ev.C. § 771]
 - Privileged documents do not lose their protected status if they are viewed by a client in advance of a deposition. *Sullivan v. Sup. Ct.* 29 CA.3d 64, 68 (1972).
 - *EXCEPTION: If the client does not remember the events recorded in a statement and uses that statement to testify, then it would be "unconscionable" to prevent the adverse party from seeing it. Privilege would be waived. *Kerns Const. Co. v. Sup. Ct.* 226 CA.2d 405, 410 (1968).
 - "Opinion Work Product" [CCP § 2018.030(a), see ¶8:225.1]: if the documents reviewed were selected by the deponent's counsel, they arguably reflect the counsel's opinion as to what is and what is not important. These documents should be absolutely protected from discovery.

Waiver by Failure to Object: Objections to form or questions or discoverability of information are generally waived unless they are properly raised:

- Objections on the ground of privilege or work product are waived unless a specific objection to disclosure is timely made during the deposition (see ¶8:731). [CCP § 2025.460(a); *International Ins. Co. v. Montrose Chemical Corp. of Calif.* 231 CA.3d 1367, 1373 (1991).
- [8:726.1]: Voluntary disclosure of protected information (failure to object) may waive any privilege at trial, even though § 2025.460(a) states only that "protection from discovery" is waived. [See Ev.C. § 912]
- A party's failure to object to questions that invade privacy rights does not automatically waive the privacy objection . . . particularly where the privacy of third parties is involved. *Boler v. Sup. Ct.* 201 CA.3d 467, 472 (1987); and see *Mendez v. Sup. Ct.* 206 CA.3d 557, 564 (1988).
 - The waiver rule applies primarily to matters of evidentiary privilege and work product. When disclosure would infringe the privacy of third persons, their rights to object must be protected. *Boler v. Sup. Ct.* 201 CA.3d at 472.

**References are to The Rutter Group, Civil Procedure Before Trial 2012

IN CASS ACTIVITY: DEPOSITION, START TO FINISH

Assume you work in a large firm with 100 attorneys and four conference rooms. A partner in the firm where you work informs you that he would like you to schedule a deposition of Frederick Lyle, the defendant and opposing party to a pending lawsuit. Our firm represents the plaintiff, ABC Corporation.

This is a civil litigation case for unfair business practices and fraud. The parties entered into a contract for the defendant to deliver 4 copiers to our client's place of business. Our client paid for the copiers in full (\$120,000.00), no balance is owed. Defendant failed to deliver the copiers and has not returned our client their money.

First: your instructor will discuss what should be done before the deposition, which will include students filling out the Deposition Notice.

Second: your instructor will discuss what should be done the day of and during the deposition, including preliminary and substantive questions.

Third: your instructor will discuss what should be done after the deposition's conclusion and the importance of deposition summaries.

Our firm's information as follows:

Johnston and Johnston, LLP
Timothy Johnson
Attorney at Law
123 Oceanfront Drive, Suite 500,
Irvine, California 92617.

Case information:

Case number C12345.
Superior Court of California, County of Orange
Central Justice Center,
Unlimited jurisdiction.