

## RESOLUTION 11-03-02

### DIGEST

#### Perjury: Extension to Deposition Practice

Amends Penal Code section 124 to provide that a deposition deemed signed and admissible pursuant to Code of Civil Procedure section 2025 is also complete for purposes of the offense of perjury.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### APPROVE IN PRINCIPLE

#### Reasons:

This resolution amends Penal Code section 124 to provide that a deposition deemed signed and admissible pursuant to Code of Civil Procedure section 2025 is also complete for purposes of the offense of perjury. This resolution should be approved in principle because it would close a “perjury loophole” by making criminal law consistent with modern civil deposition practice.

Penal Code section 124 provides that a deposition is complete when delivered by the deponent. By contrast, Code of Civil Procedure section 2025, subdivision (q)(1), provides a deponent 30 days within which to correct and sign a deposition transcript, and further provides that “[i]f 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.”

Two recent cases have found that a deponent who falsely testifies in a deposition in a manner that meets all the elements of perjury is nevertheless exempt from perjury if the deponent failed or refused to sign the deposition transcript. (*Collins v. Superior Court* (2001) 89 Cal.App.4th 1244 [reversing perjury conviction because transcript was unsigned, notwithstanding fact that transcript could be introduced in civil proceeding pursuant to Code Civ. Proc., § 2025, subd. (q)(1)]; *People v. Post* (2001) 94 Cal.App.4th 467 [reducing perjury conviction to attempted perjury because transcript was never signed].) Significantly, the *Post* opinion explicitly invites the Legislature to close this perjury loophole and to bring the Penal Code into conformity with the Code of Civil Procedure and the realities of modern deposition practice. This resolution does so.

### TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to amend Penal Code section 124 as follows:

- 1 § 124.
- 2 The making of a deposition, affidavit or certificate is deemed to be complete, within the
- 3 provisions of this chapter, from the time when it is delivered by the accused to any other
- 4 person, with the intent that it be uttered or published as true or, in the case of a deposition,

5 when the deposition is deemed signed and admissible in civil court proceedings pursuant to  
6 California Code of Civil Procedure § 2025.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Women Lawyers of Los Angeles

#### STATEMENT OF REASONS

Existing Law: Penal Code § 124 provides that a deposition is complete only when it is delivered by the accused to another person.

This Resolution: Would make Penal Code § 124 consistent with Code of Civil Procedure § 2025(q)(1) and modern deposition practice, which provides a deponent 30 days within which to correct and sign a deposition transcript and further provides that “[i]f 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.”

The Problem: The current statute – which is over 100 years old and predates the civil procedure codes governing use and admissibility of deposition testimony – provides a “perjury loophole.” Two recent California cases have found that a deponent who falsely testifies in a deposition in a manner that meets all the elements of perjury is nevertheless exempt from perjury if the deponent failed or refused to sign the deposition transcript. See Collins v. Superior Court, 89 Cal.App.4th 1244 (2001) (reversing perjury conviction because transcript was unsigned, notwithstanding fact that transcript could be introduced in civil proceeding pursuant to CCP § 2025(q)(1)) and People v. Post, 2001 WL 1573199, to be reported at 114 Cal. Rptr. 2d 356 (2001) (reducing perjury conviction to attempted perjury because transcript was never signed). Significantly, the Post opinion explicitly invited legislative change to close this perjury loophole and bring the penal code into conformity with the Code of Civil Procedure and the realities of modern deposition practice.

Current legislation works an anomalous and unfair perjury loophole by making individuals who do not sign their deposition transcripts exempt from perjury charges. Arguably, current opinions interpreting the current statute also make it malpractice for an attorney to fail to advise a client against signing a deposition transcript and make the oath administered at the outset of a civil deposition completely meaningless. The proposed change would make Penal Code § 124 consistent with the Code of Civil Procedure, consistent with modern deposition practice, and consistent with federal law.

#### IMPACT STATEMENT

The proposed legislation does not affect any other law, statute or rule.

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