

## RESOLUTION 04-05-04

### DIGEST

#### Civil Procedure: Subpoenas for Documents in Foreign Actions

Amends Code of Civil Procedure section 2029 to make its provisions applicable to all witnesses and to allow parties in foreign actions the option of using document-only subpoenas.

### RECOMMENDATION

APPROVE IN PRINCIPLE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Code of Civil Procedure section 2029 to make its provisions applicable to all witnesses and to allow parties in foreign actions the option of using document-only subpoenas. This resolution should be approved in principle because it would simplify the discovery of documents by parties to foreign actions without compromising other rights, privileges or policies.

Unlike parties to in-state actions, parties to foreign actions cannot obtain depositions of non-natural persons under Code of Civil Procedure section 2029. This bars parties to foreign actions from using document-only subpoenas. Instead, parties to foreign actions must take an oral deposition of a natural person to obtain responsive documents. The legislature has recognized the judicial efficiency of document-only subpoenas in state actions. (Code Civ. Proc., § 2020(d).) The savings of judicial and party resources available to parties in state actions should be made available to parties in foreign actions.

### TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 2029 to read as follows:

- 1 § 2029
- 2 Whenever any mandate, writ, letters rogatory, letter of request, or commission is
- 3 issued out of any court of record in any other state, territory, or district of the United
- 4 States, or in a foreign nation, or whenever, on notice or agreement, it is required to take the
- 5 oral or written deposition of a ~~natural person~~ witness in California, the deponent may be
- 6 compelled to appear and testify, ~~and or~~ or to produce documents and things, or both, in the
- 7 same manner, and by the same process as may be employed for the purpose of taking
- 8 testimony, producing documents and things, or both, in actions pending in California.

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

PROPONENT: Bar Association of San Francisco

## STATEMENT OF REASONS

Existing Law: Does not permit the issuance of California subpoenas solely for the production of documents at the request of a party to an out-of-state proceeding.

This Resolution: Would allow an out-of-state litigant to obtain documents through the subpoena process.

The Problem: Like other states, California permits parties to litigation in other jurisdictions to apply to the clerk of a California court for the issuance of a subpoena for local discovery after the foreign court issues a commission or other such order. However, Code of Civil Procedure section 2029 allows foreign litigants to obtain a subpoena only for the appearance of a “natural person.” This means that in cases where the only discovery being sought is the production of records by a corporation or other entity, a foreign litigant must take the deposition of a custodian of records or other such witness. This requires the parties to expend unnecessary time, effort, and costs.

The objective of section 2029 is to permit foreign litigants to resort to the California subpoena process to obtain discovery in this state. It should not be limited to taking depositions. The statute should be amended to provide for the issuance of subpoenas for documents only.

## IMPACT STATEMENT

This resolution would not affect any other law, statute, or rule.

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