

RESOLUTION 11-04-05

DIGEST

Discovery: Limits on Depositions

Amends Code of Civil Procedure section 2025 to limit the length and number of depositions (other than expert deposition) except by order or stipulation.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 2025(a) to limit the length and number of depositions (other than expert depositions) except by order or stipulation. This resolution should be disapproved because it stifles parties' abilities to fully discover the underlying facts of a lawsuit and fails to comply with the purpose of the discovery act, which permits "broad discovery" to avoid trial by ambush. The 1986 amendments to the Discovery Act did not limit the length or number of depositions precisely for this reason. Many cases, such as those alleging violations of the Fair Employment and Housing Act, are based on facts spanning many years. It is extremely difficult to discover the facts underlying the parties' allegations in a seven hour deposition in many of these cases. The burden is properly placed on the party wishing to limit the deposition length under current law, which requires a party to move for a protective order.

Many cases involving multiple individual and entity defendants and factual allegations spanning many years, also require more than ten depositions. The burden of moving for a protective order is properly placed on the party wishing to limit the number of depositions. The purposes of the California Discovery Act would be subverted by this resolution.

On July 1, 2005, section 2025(a) will no longer be effective. Sections 2025.010, which becomes operative on July 1, 2005 is substantively the same as section 2025(a). It is therefore recommended that if this resolution is approved, it should be amended to reflect the new section designation.

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 2025(a) to read as follows:

- 1 § 2025(a)
- 2 (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the
- 3 restrictions set forth in Section 2019, by taking in California the oral deposition of any person,
- 4 including any party to the action. The person deposed may be a natural person, an organization such
- 5 as a public or private corporation, a partnership, an association, or a governmental agency. Unless
- 6 otherwise authorized by the court or stipulated by the parties, a deposition is limited to seven hours.
- 7 The court may allow additional time upon a showing of good cause. Unless otherwise authorized by
- 8 the court or stipulated by the parties, each side is limited to ten depositions, not counting depositions
- 9 of designated expert witnesses.

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

PROPONENT: San Diego Bar Association

STATEMENT OF REASONS:

Existing Law: Under existing law, the burden is on the party wishing to limit the time spent in deposition, rather than on the party wishing to extend a deposition.

Resolution: This resolution switches the burden, as it is in federal courts, to impose a presumption that the deposition will last only one day, and to require the party claiming a need for a longer deposition, to justify that position.

The Problem: In 1958, California adopted its first comprehensive discovery act, intending to permit broad discovery to avoid "trial by ambush." The legislature theorized that if all cards were on the table, parties would save time and money by settling cases early. By 1986, the legislature had realized that discovery abuse was spiraling out of control. The 1986 amendments were intended to address those abuses. Those amendments failed to set a limit on depositions. Depositions are the most expensive, but also one of the most valuable, discovery tools. The federal courts have limited deposition-taking since 1993 and many states have followed suit.

Reasons: Limiting depositions will force the parties to plan their discovery in advance, realizing that if they waste time, they will not be given more time. With careful planning, these limits are realistic in the majority of cases and can be modified by stipulation or court order in extraordinary cases.

IMPACT STATEMENT:

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

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