

**RESOLUTION 11-11-05**

**DIGEST**

Discovery: Place of Deposition of Plaintiff or Cross-complainant

Amends Code of Civil Procedure sections 2025.250 and 2025.260 to allow a plaintiff or cross-complainant’s deposition to be taken where the action is pending or within 75 miles of the deponent’s residence.

**RESOLUTIONS COMMITTEE RECOMMENDATION**

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure sections 2025.250 and 2025.260 to allow a plaintiff or cross-complainant’s deposition to be taken where the action is pending or within 75 miles of the deponent’s residence. This resolution should be disapproved because the burden imposed on the parties outweighs its benefits.

The Constitution guarantees individuals sufficient access to civil courts. (U.S. Const. amend. I and XIV.) However, practically speaking, the fundamental right of access to the civil courts by individuals of low and moderate means is limited. (James W. Meeker & John Dombink (1993) *Access to the Civil Court for Those of Low and Moderate Means*, 66 S. Cal. L. Rev 2217, 2218.) A national poll for the American Bar Association and reports by the California State Bar discovered that many Americans could neither afford nor receive legal help for a civil legal problem. (*Ibid.*) Today, “many Californians . . . cannot afford to pay the rates of even moderately priced attorneys for pressing legal needs.” (*Ibid.*)

Many indigent plaintiffs retain attorneys who assist them by paying filing fees, expert witness fees, jury fees, deposition costs, and related travel expenses. Here, this resolution would cause a significant increase in litigation costs to plaintiffs and their attorneys who would be forced to travel great distances to take the deposition of the defendant/cross-complainant. Increasing the out-of-pocket expenses could have a chilling effect on the ability of plaintiffs with low and moderate means and those in rural areas to access the civil courts of California. Therefore, this resolution should be disapproved because it negatively influences the fundamental right to access to courts of our State’s most vulnerable citizens.

**TEXT OF RESOLUTION**

RESOLVED that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure Sections 2025.250 and 2025.60 to read as follows:

- 1     §2025.250
- 2             (a) Unless the court orders otherwise under Section 2025.260, the deposition of a natural
- 3     person, ~~whether or not a party~~ other than a plaintiff or cross-complainant to the action, shall be taken
- 4     at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of
- 5     the deponent’s residence, or within the county where the action is pending and within 150 miles of
- 6     the deponent’s residence. The deposition of a natural person who is a plaintiff or cross-complainant
- 7     to the action may be taken within the county where the action is pending or within 75 miles of the
- 8     deponent’s residence.
- 9             (b) The deposition of an organization that is a ~~party~~ plaintiff or cross-complainant to the
- 10    action shall be taken at a place that is, at the option of the party giving notice of the deposition, either
- 11    within 75 miles of any of the organization’s ~~principal~~ executive or business offices in California, or
- 12    within the county where the action is pending ~~and within 150 miles of that office.~~
- 13             (c) Unless the organization consents to a more distant place, the deposition of any other
- 14    organization shall be taken within 75 miles of the organization’s principal executive or business office
- 15    in California, unless the organization consents to a more distant place. If the organization has not

16 designated a principal executive or business office in California, the deposition shall be taken at a  
17 place that is, at the option of the party giving notice of the deposition, either within the county where  
18 the action is pending, or within 75 miles of any executive or business office in California of the  
19 organization.

20  
21 §2025.260

22 (a) A party desiring to take the deposition of a natural person who is ~~not a party-plaintiff or~~  
23 ~~cross-complainant~~ to the action or an officer, director, managing agent, or employee of a party may  
24 make a motion for an order that the deponent attend for deposition at a place that is more distant  
25 than that permitted under Section 2025.250. Likewise a plaintiff or cross-complainant to the action  
26 whose deposition has been noticed in the county where the action is pending may make a motion to  
27 have the deposition held at a different location. ~~These~~ motions shall be accompanied by a  
28 declaration under Section 2016.040.

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

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

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

34 (3) The convenience of the deponent.

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

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

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

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

42 (c) The order may be conditioned on the advancement by the moving party of the  
43 reasonable expenses and costs to the ~~deponent~~ non-moving party for travel to the place of  
44 deposition.

45 (d) The court shall impose a monetary sanction under Chapter 7 (commencing with Section  
46 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion ~~to~~  
47 ~~increase travel limits for a party deponent~~ under subsection (a), above, unless it finds that the one  
48 subject to the sanction acted with substantial justification or that other circumstances make the  
49 imposition of the sanction unjust.

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

PROPONENT: Bar Association of San Francisco

#### STATEMENT OF REASONS

Existing Law: Requires the deposition of a plaintiff who resides outside the county where an action was filed to be taken either within 75 miles of the plaintiff's residence or within the county where the action is pending and within 150 miles of the plaintiff's residence.

This Resolution: Would create a presumption that the deposition of a plaintiff or cross-complainant will be taken in the county where the action is pending.

The Problem: Generally, a defendant who is sued by a plaintiff from outside the county of venue may depose the plaintiff only at his or her residence or its place of business. This creates a seemingly unfair result the party being sued must usually travel great distances to take the deposition of the party that initiated the action, or seek a special dispensation from the court to require the plaintiff to travel to the chosen forum for his or her deposition.

A plaintiff has much more opportunity than a defendant to choose the forum of the action. Therefore, it is only fair to require the plaintiff to travel to the forum for deposition. Federal practice dictates generally

that the plaintiff must be made available for deposition in the district where the action was filed. (*Gibbs v. National R.R. Passenger Corp.* (N.D. Ind. 1997) 170 F.R.D. 452, 453; accord, *Archer Daniels Midland v. Aon Risk Services, Inc.*(D. Minn. 1999) 187 F.R.D. 578, 588.) This resolution would make California practice consistent with the federal rule, and would result in a more equitable imposition of discovery expenses.

In accordance with CDCBA rules, BASF timely offers this resolution for consideration. Consistent with traditional CDCBA practice, the Proponent reserves the right to timely withdraw or amend the resolution.

#### IMPACT STATEMENT

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

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#### COUNTERARGUMENT

##### **SAN DIEGO COUNTY BAR ASSOCIATION**

Plaintiffs and cross-complainants should be treated the same as any other party deponents. Venue statutes tend to favor the convenience of defendants. Plaintiffs do not have free choice of where to file their lawsuits, and are frequently required to file at long distances from their residences.