

RESOLUTION 10-05-06

DIGEST

Civil Discovery: Location of Plaintiff's Deposition

Amends Code of Civil Procedure sections 2025.250 and 2025.260 to expand the location for plaintiff's deposition.

TEXT OF RESOLUTION

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

- 1 ~~§2025.250~~
- 2 ~~—— (a) Unless the court orders otherwise under Section 2025.260, the deposition of a~~
- 3 ~~natural person, whether or not a party to the action, shall be taken at a place that is, at the~~
- 4 ~~option of the party giving notice of the deposition, either within 75 miles of the deponent's~~
- 5 ~~residence, or within the county where the action is pending and within 150 miles of the~~
- 6 ~~deponent's residence.~~
- 7 ~~—— (b) The deposition of an organization that is a party to the action shall be taken at a~~
- 8 ~~place that is, at the option of the party giving notice of the deposition, either within 75 miles~~
- 9 ~~of the organization's principal executive or business offices in California, or within the~~
- 10 ~~county where the action is pending and within 150 miles of that office.~~
- 11 ~~—— (c) Unless the organization consents to a more distant place, the deposition of any~~
- 12 ~~other organization shall be taken within 75 miles of the organization's principal executive or~~
- 13 ~~business office in California. If the organization has not designated a principal executive or~~
- 14 ~~business office in California, the deposition shall be taken at a place that is, at the option of~~
- 15 ~~the party giving notice of the deposition, either within the county where the action is~~
- 16 ~~pending, or within 75 miles of any executive or business office in California of the~~
- 17 ~~organization.~~
- 18
- 19 §2025.260
- 20 (a) A party desiring to take the deposition of a natural person who is a party to the
- 21 action or an officer, director, managing agent, or employee of a party may make a motion
- 22 for an order that the deponent attend for deposition at a place that is more distant than that
- 23 permitted under Section 2025.250. This motion shall be accompanied by a declaration
- 24 under Section 2016.040.
- 25 (b) In exercising its discretion to grant or deny this motion, the court shall take into
- 26 consideration any factor tending to show whether the interests of justice will be served by
- 27 requiring the deponent's attendance at that more distant place, including, but not limited to,
- 28 the following:
- 29 (1) Whether the moving party selected the forum.
- 30 (2) Whether the deponent will be present to testify at the trial of the action.
- 31 (3) The convenience of the deponent.

32 (4) The feasibility of conducting the deposition by written questions under Chapter
33 11 (commencing with Section 2028.010), or of using a discovery method other than a
34 deposition.

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

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

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

41 (c) When the deponent whose deposition is desired to be taken at a place that is more
42 distant than permitted under Section 2025.250 is a plaintiff, there shall be a rebuttable
43 presumption in favor of granting the motion in order to take a plaintiff's deposition in the
44 county where the action is pending. The presumption may be rebutted by a showing of
45 financial or physical hardship to the deponent.

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

48 (~~e~~) The court may impose a monetary sanction under Chapter 7 (commencing with
49 Section 2023.010) against any party, person, or attorney who unsuccessfully makes or
50 opposes a motion to increase travel limits for a party deponent, ~~unless~~ only if it finds that the
51 one subject to the sanction acted without substantial justification or that other circumstances
52 make the imposition of the sanction ~~un~~just.

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

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

Existing Law: Requires that the depositions of parties to a lawsuit be taken either within 75 miles of the deponent's residence or principal place of business or within 150 miles of the same if within the county where the action is pending. Another party can move to take the deposition at a place more distant, but the burden is on the moving party to show cause for such a location, and sanctions may be imposed if the motion is denied unless the moving party can show substantial justification for making the motion.

This Resolution: Would lessen somewhat the burden of obtaining a more distant place for taking the deposition of a party plaintiff, would broaden the places from which distances are measured as to organizations and would allow sanctions only if the party to be sanctioned acted without substantial justification in making or opposing the motion.

The Problem: Under present law, in order to take the deposition of a plaintiff in the county where the action is venued, if the plaintiff resides (or has its principal place of business) more than 150 miles from where the deposition is to be taken, defendant must make a motion to change the location of the deposition, establish cause for doing so, and face possible sanctions if the motion is denied. Unless it imposes a hardship, a plaintiff ordinarily should be prepared to

be deposed in the county where he, she or it filed the lawsuit. This change would make that a rebuttable presumption, and the burden would be on the plaintiff to overcome the presumption on the basis of financial or physical hardship. Thus, while a defendant must still bring a motion to take a distant plaintiff's deposition in the county where an action is pending, such motions would ordinarily be granted unless the plaintiff can demonstrate hardship. This seems to be a fair balance. This change also would bring California law into conformity with federal law. (*Archer Daniels Midland v. Aon Risk Services, Inc*, 187 F.R.D. 578, 588 (D. Minn. 1999) and cases cited therein.)

This amendment would also include any of an organization's executive or business offices in California as places from which to measure the 75-mile or 150-mile travel limitation. An organization's *principal* office may be more than 75 miles from where a party wants to depose the organization, but it may have another office within 75 miles of such location. There does not seem to be any good reason not to allow the organization to be deposed within 75 miles of either location.

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 will not affect any other statute, law or rule.

AUTHOR AND/OR PERMANENT CONTACT: John T. Hansen, Nossaman, Guthner, Knox & Elliott, LLP, 50 California Street, San Francisco, CA 94111; 415-438-7245; fax: 415-398-2438; e-mail: jhansen@nossaman.com

RESPONSIBLE FLOOR DELEGATE: John T. Hansen