

TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION

ON S.B. NO. 2497

RELATING TO THE UNIFORM INTERSTATE
DEPOSITIONS AND DISCOVERY ACT.

LATE TESTIMONY

BEFORE THE SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Thursday, February 2, 2012, at 9:30 a.m.
Conference Room 016, State Capitol

PERSON(S) TESTIFYING: KEVIN SUMIDA, Commissioner
Commission to Promote Uniform Legislation

To Chair Hee, Vice Chair Shimabukuro, and Members of the Committee:

My name is Kevin Sumida and I am testifying on behalf of the Commission to Promote Uniform Legislation (CPUL), which strongly supports passage of S.B. No. 2497, the UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT (“UIDDA”).

The Act sets forth an efficient and inexpensive procedure for litigants to depose out of state individuals and for the production of discoverable materials that may be located out of state. Uniform procedures have become necessary as the amount of litigation involving individuals and documents located outside of the trial state has increased.

Under UIDDA, litigants can present a clerk of the court located in the state where discoverable materials are sought with a subpoena issued by a court in the trial state. Once the clerk receives the foreign subpoena, the clerk will issue a subpoena for service upon the person or entity on which the original subpoena is directed. The terms of the issued subpoena must incorporate the same terms as the original subpoena and contain the contact information for all counsel of record and any party not represented by counsel.

The Act requires minimal judicial oversight and eliminates the need for obtaining a commission or local counsel in the discovery state, letters rogatory, or the filing of a miscellaneous action during the discovery phase of litigation. Discovery authorized by the subpoena is to comply with the rules of state in which it occurs. Furthermore, motions to quash, enforce, or modify a subpoena issued pursuant to the Act shall be brought in and governed by the

LATE TESTIMONY

rules in the discovery state.

The Uniform Act improves current state procedures in the following ways:

Efficient. The clerk of court in the discovery state acts in a purely ministerial role, but in a manner that is sufficient to invoke jurisdiction of the discovery state over the deponent. **Inexpensive.** The Act eliminates the need for out of state litigants to obtain a commission or local counsel in the discovery state and file miscellaneous actions during discovery in order to subpoena individuals located outside the trial state.

Minimized Judicial Oversight. Under the Act, there is no need to present the matter to a judge in the discovery state before a subpoena can be issued.

Clear rules governing discovery. Discovery permitted by the Act must comply with the laws of the discovery state. The Act recognizes that the discovery state has a significant interest in protecting its residents who become non-party witnesses in an action pending in a foreign jurisdiction from unreasonable or burdensome discovery requests. Moreover, all motions to quash or modify a subpoena must comply with the law of the discovery state.

This Act has already been adopted by 21 jurisdictions, including California, Colorado, Delaware, District of Columbia, Idaho, Indiana, Kansas, Kentucky, Maryland, Mississippi, Montana, Nevada, New Mexico, New York, North Carolina, Oregon, South Carolina, Tennessee, Utah, and Virginia.

Furthermore, the Act is being considered for adoption this year by seven other jurisdictions, including Georgia, Hawaii, Michigan, North Dakota, Pennsylvania, Vermont, and Washington