



UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT (2007)¹

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Commissioner - National Conference of Commissioners on Uniform State Laws

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Introduction

The NCCUSL first visited this issue in 1920 when it adopted the Uniform Foreign Depositions Act that was superseded by the Uniform Interstate and International Procedure Act in 1962.

In 1977 the NCCUSL determined that the '62 Act was obsolete and withdrew it from further consideration.

This act addresses common issues that have developed among the states to simplify the process for obtaining a subpoena from the state in which the witness is located, clarifies the applicable law, and reduces the cost of conducting discovery in a state other than where the action is venued and is fair to the deponents. It is patterned on FRCP 45. Minnesota adopted FRCP 45 with appropriate modifications.

The Act and official comments can be found at

http://www.law.upenn.edu/bll/archives/ulc/idda/2007act_final.htm

A. Issues Addressed by the Act.

- a. In what kind of proceeding may depositions be taken?
- b. Who may seek depositions?
- c. What matters can be covered in a subpoena?
- d. What is the procedure for obtaining a deposition subpoena?

¹ This outline is taken directly from the Act and Comments published by the National Conference of Commissioners on Uniform State Laws.

- e. What is the procedure for serving a deposition subpoena?
- f. Which jurisdiction has power to enforce or quash a subpoena?
- g. Where can the deponent be deposed?
- h. What witness fees are required?
- i. Which jurisdiction's discovery procedure applies?
- j. Which jurisdiction's evidence law applies?

B. How the Act Addresses the Issues.

- a. It establishes a simple clerical procedure under which a trial state subpoena can be used to issue a discovery state subpoena.
- b. It has minimal judicial oversight: it eliminates the need for obtaining a commission, letters rogatory, filing a miscellaneous action, or other preliminary steps before obtaining a subpoena in the discovery state.
- c. It is cost effective: it eliminates the need to obtain local counsel in the discovery state to obtain an enforceable subpoena.
- d. It is fair to deponents: it provides that motions brought to enforce, quash, or modify a subpoena, or for protective orders, shall be brought in the discovery state and will be governed by the discovery state's laws.

C. Application. It applies to a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

D. Section 3. Issuance of Subpoena.

- a. A party must obtain a subpoena from the state where the action is venued.
- b. The trial state subpoena must be submitted to the clerk of the court in the county in which discovery is sought.
- c. Upon receiving the request and the trial state subpoena the clerk of court shall promptly issue a subpoena for service upon the person to whom the trial state subpoena was issued.
- d. A subpoena must incorporate the terms used in the trial state subpoena, and contain or be accompanied by the names, addresses, and contact information of all counsel of record and of any party not represented.

E. Section 4. Service of Subpoena. The subpoena must be served in compliance with the statute or rule of the state issuing the subpoena.

F. Section 5. Deposition, Production, and Inspection. The rules and statutes of the deponent's state are applicable to enforce compliance with subpoenas to attend and give testimony and produce documents.

G. Section 6. Application to Court. Application to the court for a protective order must comply with the statutes and rules of the deponent's state.

H. Section 7. Uniformity of Application and Construction. The need for uniformity must be given consideration when interpreting the act.

I. Section 8. Application to Pending Actions. To be set by the legislature.