

MEMORANDUM

To: WILICK LAW GROUP
From: Trevor Creel
Date: October 4, 2011
RE: Foreign Depositions

I. INTRODUCTION

Nevada recently adopted the *Uniform Interstates Depositions and Discovery Act*,¹ which establishes new procedures for requesting and issuing certain subpoenas; providing for the service and enforcement of such subpoenas; requiring that an application for a protective order or to enforce, quash or modify such subpoenas comply with all applicable rules of court and laws of Nevada; and repealing the *Uniform Foreign Depositions Act*, codified as NRS 53.050, 53.060. And 53.070.

II. PRIOR LAW

Under prior law, the *Uniform Foreign Depositions Act* provided that an out-of-state witness may be compelled to appear and testify in the same manner and by the same process as may be used for the purpose of taking testimony in Nevada.² This was done pursuant to NRS Chapter 53, which has been amended accordingly to repeal NRS 53.050, 53.060 and 53.070.

III. UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT

This new Act provides procedures for courts in Nevada to issue subpoenas from out of state litigants. Section 9 of the bill, as I have yet to see the bill actually codified in NRS, requires an out-of-state party that wishes to have a subpoena issued in Nevada to submit a foreign subpoena to the clerk of a court in the appropriate county in Nevada in which the deposition or discovery is to take place,³ and provides procedures for the court clerk to issue the in-state subpoena. Specifically, upon the presentation/application of the foreign subpoena to a Nevada clerk, the clerk shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed, in accordance with that court's procedures.⁴ In other words, the Nevada clerk will "reissue" the foreign subpoena.

¹ This new law came into effect on October 1, 2011.

² If you are wondering why this language is so vague, join the club. After reviewing this language several times I still don't know what is required under the previous version of NRS 53.060.

³ Please note that a request for the issuance of a subpoena pursuant to this law does not constitute an appearance in Nevada, presumably implying that a Nevada attorney is no longer required to issue a "Nevada" subpoena.

⁴ I suspect that EDCR 2.80 will be amended since it contemplates procedures required by the *Uniform Foreign Depositions Act*; however, I have yet to see any such rule proposal or amendment.

In addition, the foreign subpoena ***must***: (1) incorporate the terms used in the foreign subpoena; and (2) contain or be accompanied by the names, addresses and telephone numbers of ***all*** counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel. The subpoena must further comply with Rule 45 of NRCPP.

Finally, section 11 provides that an application for a protective order or to enforce, quash or modify a foreign subpoena issued by a Nevada court must comply with all applicable rules of court and laws of Nevada.

IV. ANALYSIS

The rule, although adding a presumably unnecessary ministerial step, is much clearer than the previous *UFDA*. Essentially, the clerk's simple act of "reissuing" the subpoena sufficiently establishes jurisdiction over a deponent or person/entity served with a "foreign" subpoena. Once issued, the subpoena is subject to the same substantive law as any other Nevada subpoena.

The intended result of the Act is to minimize judicial oversight and eliminate the need for obtaining a commission or local counsel in the discovery state, letters rogatory,⁵ or the filing of a miscellaneous action during the discovery phase of litigation

It is also important to note that the purpose of the amended statute is to promote uniformity of the law in all states that have enacted it. Currently, there are 17 states (and 1 district) that have codified the *Uniform Interstate Depositions and Discovery Act*, with 4 more states codifying the Act in the coming year.⁶

⁵ A letter rogatory is a formal request from one court to a foreign court for some type of judicial assistance, usually as it relates to discovery or service of process rules and procedures.

⁶ The states that have enacted the Act already are: Colorado, Delaware, District of Columbia, Idaho, Indiana, Kansas, Maryland, Mississippi, Montana, Nevada, New Mexico, New York, North Carolina, Oregon, South Carolina, Tennessee, Utah, and Virginia. The states that will be adopting the Act in the next year are: Georgia, North Dakota, Pennsylvania, and Vermont.