

**MINUTES OF MEETING
COUNCIL ON COURT PROCEDURES**

Saturday, November 10, 2007 - 9:30 a.m.

(Minutes amended November 26, 2007)

Oregon State Bar Center
5200 SW Meadows Road
Lake Oswego, Oregon

ATTENDANCE

Members Present:

Eugene H. Buckle
Brian S. Campf
Brooks F. Cooper
Kristen S. David
Dr. John A. Enbom
Hon. Robert D. Herndon
Hon. Jerry B. Hodson
Hon. Lauren S. Holland
Hon. Rodger J. Isaacson
Hon. Rives Kistler
Alexander D. Libmann
Hon. Eve L. Miller
Leslie W. O'Leary
Shelley D. Russell
Hon. David Schuman
John L. Svoboda
Mark R. Weaver
Hon. Locke A. Williams

Members Absent:

Don Corson
Hon. Daniel L. Harris
Martin E. Hansen
Hon. Mary Mertens James
David F. Rees

Guests:

David Nebel, Oregon State Bar

Council Staff:

Mark A. Peterson, Executive Director
Shari C. Nilsson, Administrative Assistant

ORCP AMENDMENTS CONSIDERED THIS MEETING

ORCP 1
ORCP 7
ORCP 7D(4)(a)
ORCP 18A
ORCP 18B
ORCP 19B
ORCP 21A
ORCP 27
ORCP 43B
ORCP 44
ORCP 44A
ORCP 44B

ORCP 47C
ORCP 54A
ORCP 54E
ORCP 55H
ORCP 57
ORCP 57D(2)-(4)
ORCP 58
ORCP 58B(5)
ORCP 59
ORCP 59H
ORCP 61

I. Call to Order

Mr. Buckle called the meeting to order at 9:33 a.m.

II. Introduction of Guests

No guests were present that required introduction.

III. Approval of October 13, 2007, Minutes

Mr. Buckle called for a motion to approve the amended October 13, 2007, minutes. The motion was made and seconded and the minutes were approved by the membership with no amendments or corrections.

IV. Administrative Matters

A. Report on Council on Court Procedures Website

Ms. David showed the Council the new website, which is now live on the Lewis & Clark server. She stated that she and Ms. Nilsson are in the process of adding prior meeting minutes and materials. Mr. Buckle inquired about how many years' worth of Council materials will be included. Ms. David indicated that so far we are going back several biennia but that how many years' worth will be included can depend on how brittle the available documents are and whether they can be scanned. Judge Miller suggested that it would be helpful to include an index of which rules the Council has considered. That index would link to appropriate minutes and other documents. Prof. Peterson stated that Lewis & Clark should have some students available to help with scanning the old materials and perhaps creating such an index.

Mr. Buckle asked about the best way to publicize the new website. Mr. Cooper asked that Council members send Ms. Nilsson web addresses for organizations of which they are members so that we can inform those organizations. Prof. Peterson and Ms. Nilsson will also prepare a press release to send to the OSB and local bar associations to inform them of the new website. Mr. Cooper reported that he is still waiting to hear from the State regarding a domain for the Council's website (which would redirect to the Lewis & Clark site) so the Lewis & Clark address is the one that should be disseminated.

In order to reduce the risk of the Council listserv address becoming public, e-mails to the Council website will automatically be sent to Ms. Nilsson, who will disseminate them to the listserv. Ms. David and Ms. Nilsson are available to assist Council members in setting up a folder for those e-mails.

B. Council Documents and Public Records Requirements

Prof. Peterson stated that he has reviewed the public records requirements and that all documents used, all materials disseminated to the Council, committee reports, and draft rules need to be available for public review. Correspondence between Council members does not need to be part of the public record.

Prof. Peterson also encouraged members to use the format outlined in the Advance Sheets when drafting proposed rule amendments for the sake of uniformity. He also asked that they include the date of revision in the footer so that the correct order of the versions will be easier to track. The format is to italicize and bracket deletions and to bold and underline additions.

Mr. Buckle inquired as to whether notes from the committees must also be included. Prof. Peterson stated that the first formal proposal and all subsequent revisions should be included, not personal notes. Mr. Buckle asked if the point was to preserve legislative history. Prof. Peterson indicated that the legislative history is helpful if reasons for a rule change are unclear. Ms. David recounted one of her cases in which legislative history proved to be invaluable, particularly looking back at various drafts of a particular rule change.

Mr. Svoboda asked whether there will be a link to legislative history on the Council website. Ms. David responded that there will be a link to a legislative tracings website. Mr. Svoboda stated that this is important as the Council does not wish people to assume that its published amendments were accepted as-is by the Legislature if this is not the case, and any amendment, supplement, or repeal of a rule promulgated by the Council will be evident.

C. Performance Measures

David Nebel of the Oregon State Bar reported that some guidelines for performance measures are available at the Department of Administrative Services (DAS) website. He stated that each state agency must create and have the Legislature approve performance measures. He indicated that the model is somewhat difficult with the Council as it is difficult to apply generic agency performance measures. Mr. Nebel suggested that one or two Council members meet with the DAS Progress Board to come up with a set of measures. He also stated that in 2004 the Council had attempted to create some performance measures, such as looking at the numbers of Council-promulgated amendments that became law without amendment by the Legislature.

Judge Miller stated that judging the Council on the number of times a rule was amended is missing the mark. She wondered if a better measure would be the number of times the Council discussed a rule. Judge Herndon emphasized that a one-size-fits-all protocol does not apply to the Council and seconded the

suggestion to meet with DAS.

Mr. Nebel indicated that the Legislature is looking for objective goals so that they can easily determine whether those goals were met or not. Prof. Peterson stated that the Council needs to clarify its mission statement and that, as the Legislature wants to see end results, it is necessary to differentiate between outputs and outcomes. The Council's goal is to make the ORCP work better and to keep them modern. With public outreach the Council will receive more suggestions and grow our performance by reviewing more of these suggestions. He indicated that one goal of public outreach is to get the public to think of the Council as *the* place that you bring suggestions for rule changes. He stated that the number of proposed amendments considered may be as good of a measure as how many of the Council's promulgated amendments are passed by the Legislature without amendment.

Justice Kistler suggested that any performance measures need to capture everything that the Council does – including stopping ill-advised amendments as well as promulgating helpful ones. He stated that the Legislature needs to be able to see more than just the fact that we passed a certain number of rule changes in a biennium, as they may not see that number of amended rules as justifying the Council's budget.

Judge Miller emphasized the need to track comments and inquiries from the public and from attorneys. Prof. Peterson stated that issue may relate more to customer service, which is also important. Ms. David stated that we may be able to use website counters to track visitors and that we can keep track of how many e-mails we receive.

Mr. Buckle inquired as to whether there was a time line for putting performance measures in place. Mr. Cooper indicated that he believed that these measures should already be in place, according to the Legislature. Prof. Peterson's impression is that the Council has until the end of the biennium and performance measures can be presented with the agency budget request. Judge Miller stated that she believes that performance measures should be drafted by the end of the year. Prof. Peterson will contact DAS before the next meeting and attempt to arrange a meeting including Mr. Corson, Mr. Nebel, and someone at DAS to discuss performance measures.

D. Contact with Legislators

Prof. Peterson indicated that, even using both home and work addresses, there are 13 senatorial districts and 37 house districts that do not have a Council member in them. He stated that the goal of contact with legislators is to keep them informed of what the Council is doing, not to endorse any particular rule changes. He inquired as to whether this is an ethical concern for the Council's judge members.

Judge Herndon indicated that his understanding is that communication is permitted if it is law-related, as opposed to money-related. Judge Miller stated that, if it is an informative letter, it is fine.

Mr. Cooper strongly suggested that each Council member should write to his or her legislators every month, even if there are multiple members in a district. He also suggested that Council members “adopt” those districts where no member works or lives. Mr. Buckle asked that each Council member write a letter to their representative and senator before the December meeting. At the December meeting districts that are not covered will be assigned. He indicated that e-mail is probably the best way to reach the legislators, and that brevity will most likely be appreciated.

Judge Isaacson emphasized that the letters should include what public benefit any rule changes will have, not just what the effect would be on lawyers. Prof. Peterson suggested talking about specific rule changes and how (in detail) they would benefit the State of Oregon. It was suggested that when members send these legislator e-mails, they send a blind copy to Ms. Nilsson, who will keep track and have the mails available for members to review. Mr. Cooper will make a list of non-represented districts and have it available at the December meeting. Mr. Nebel suggested that we be sure to include the Senate President and Speaker of the House and that communications from the Council should perhaps come from Mr. Corson as chair.

E. Contract with Northwestern School of Law at Lewis & Clark

Copies of the proposed contract with Northwestern School of Law were given to Council members for review. Prof. Peterson indicated that a copy was given to the Law School’s general counsel for review before the Dean signs it. Mr. Buckle asked that a motion be made to have Mr. Corson sign the contract. The motion was made, seconded, and approved by the membership.

F. Future meeting dates/locations

The Council discussed the meeting schedule. Judge Miller raised concerns about three possible conflicts: the Oregon State Bar Litigation Section meeting in Skamania on March 7, 2008; the Circuit Court Judge’s Conference in Sunriver beginning May 4, 2008; and another judge’s conference in Salishan beginning October 12, 2008.

It was suggested that the May 3, 2008, meeting be changed from Medford/Ashland to the Bend area and that Medford/Ashland be the location of the February 9, 2008, meeting. Prof. Peterson asked that Council members e-mail Ms. Nilsson with any other potential conflicts. Ms. Nilsson will circulate an updated proposed schedule before the December meeting.

V. Old Business

A. Committee Reports

1. ORCP 7 (Duty to Save Costs of Service Protocol)

Mr. Cooper indicated that the committee has met and that a written report will be provided at December's meeting. The committee's recommendation will be that there is no efficient way to streamline because of ORS 12.020, which is outside of the Council's jurisdiction. Mr. Cooper will e-mail the report to the listserv before the next meeting.

Judge Miller asked whether there is a protocol for submitting committee reports. Mr. Buckle stated that as soon as a report is available it should be sent to the listserv. Prof. Peterson indicated that, if sent to the listserv, copies of the report will also be provided at the next meeting.

2. ORCP 18A (Form Pleadings for Personal Injury Complaints)

Mr. Libmann indicated that he spoke with the proponent, Sutherlin attorney Danny Lang, who forwarded sample California form pleadings for the committee's review. Mr. Libmann forwarded those to the other committee members. The committee will meet and present a report at the December meeting.

3. ORCP 18B (Prayer for Damages)

Ms. O'Leary stated that the committee has met three times and is still gathering information and case law. They will meet again and present a report at the December meeting.

4. ORCP 19B (Affirmative Defenses)

Ms. David presented her committee's written report. The committee's conclusion was that there is no pressing need for change at this time. Ms. David reported that replacing "res judicata" with preclusion would probably add confusion. She indicated that ORCP 19B includes "and any other matter" and leaves an opening for those affirmative defenses not specifically listed. Some affirmative defenses are determined on a case-by-case approach.

Mr. Buckle asked whether the committee had a sense of why the particular defenses that are listed were placed in ORCP 19B. Ms. David stated that the committee had not done any legislative history research on the matter.

Judge Miller inquired whether, when an affirmative defense is not pleaded, a court can apply it on its own motion. Ms. David indicated that there is a recent case that states that, if unclean hands is not pleaded, the court can apply the doctrine on its own as an equitable remedy. Prof. Peterson stated that, if the court rules a defense to be an affirmative defense, the party may be precluded from putting on evidence if it is not included in the pleading. Ms. David stated that there are two different cases that give two opinions on the matter. She said that the committee discussed whether it was a procedural or substantive issue and determined that a change would be substantive. No vote was taken.

The committee's report is attached as Appendix A.

5. ORCP 21A, 27, 44A, 55H (Probate Court Matters)

Mr. Cooper indicated that the committee will provide a written report at the December meeting.

6. ORCP 54A (Voluntary Dismissals)

Mr. Campf indicated that the committee has met and that the conclusion is that a rule change would result in a substantive change, not a procedural one, so the committee's opinion is that any change should be made in the statute on arbitration. He will provide a written report next week.

Judge Hodson had sent an e-mail to Multnomah County judges regarding this issue and received a report from Judge Leslie Roberts on a slightly different issue that the committee might be interested in pursuing. After a year of trial preparation, the plaintiff was unable to get a continuance and utilized her opportunity to take a voluntary dismissal without prejudice and immediately re-filed the case and got it rescheduled. The defendant wanted some kind of relief, either to make the dismissal with prejudice or to get attorney fees not available under the claim involved. There was no remedy because there was an absolute right to dismiss 5 days before trial and such dismissal is without prejudice. Judge Roberts wondered if the rule should be amended so that the court would have some discretion if the voluntary dismissal is prejudicial to the defendant or whether the 5 day rule should be pushed back to a time before the heavy trial preparation is likely done, for example 45 days before trial, allowing dismissal later only on the court's order.

There was discussion about whether fees should be allowed in this case. Ms. David indicated that costs are available, but not fees. Mr. Cooper stated that there has to be an adjudication on the merits to get attorney fees and it would be incongruent if the defendant was awarded attorney fees on

the first case and then the plaintiff ultimately prevailed and was awarded attorney fees on the newer case. Judge Miller suggested that this issue also be looked at by the committee. Prof. Peterson suggested that the change seems more procedural than substantive to him. Judge Miller suggested that to deny someone the right to go to court again is probably substantive but to compensate someone who has paid out whatever sums are provable is what needs to be addressed as a procedural issue. There was discussion about changing the 5 day time period. Judge Hodson also stated that, if it were a matter of timing, it would be more procedural. Mr. Cooper stated that he believes that 5 days is the shortest operative time that is in any of the rules and he would be interested in changing it. Judge Miller suggested getting comments on changing the timeline.

Judge Williams suggested simply adding the language “or as ordered by the court.” Mr. Cooper pointed out that, even if you are within the 5 day time period, the court still retains the discretion to allow you to dismiss without prejudice.

The committee agreed to look into the issue Judge Roberts raised. The text of Judge Roberts’ e-mail is attached as Appendix B.

7. ORCP 54E (Offers of Settlement)

Mr. Buckle indicated that the committee will provide a written report at December’s meeting.

8. ORCP 57, 58, 59, 61 (Jury Improvement)

It was reported that no committee meeting was held. Mr. Buckle will contact Judge Harris (who was absent).

9. ORCP 57D(2)-(4) (Peremptory Challenges for Third Parties)

It was reported that no committee meeting was held. Judge Herndon will contact Mr. Hansen (who was absent).

10. ORCP 58B(5) (Rebuttal Evidence)

Judge Miller reported that the committee had met and provided a written report. The committee’s consensus was that this is more of an education issue than a rule issue. Judge Miller stated that rebuttal evidence is defined in the rules of evidence but that reaching out to attorney and judge communities regarding education on this matter is advisable. Some suggestions were CLEs, presentations by the Judicial Education Committee, and a presentation at the new judge’s seminar. Judge Miller

asked that Council members reach out to those with whom they have connections regarding this issue.

The committee's report will be circulated at the December meeting.

11. E-Filing

Mr. Cooper stated that the committee has met and has proposed changes to Rules 1 and 7. He will provide these proposals at the December meeting. Essentially the changes would be made at the beginning of the rules rather than having to amend each reference to "document." This will pave the way for the Chief Justice to allow for the transition to electronic filing by amending the UTCRs.

B. ORCP 44B (Medical Examinations)

Judge Isaacson stated that two biennia ago, a committee had done a good deal of work on ORCP 44B and had prepared amendments. The amendments were unable to obtain a supermajority due to disputes between the plaintiff and defense bar. Mr. Buckle suggested that the amendments could be recirculated but that the controversy would probably still exist. After discussion, the Council agreed not to reconsider amendments to this rule.

VI. New Matters

A. Requests for Possible Amendments from OSB Judicial Administration Committee

1. ORCP 7D(4)(a) (DMV Service Requirement)

Mr. Corson received an e-mail from Mike Bloom of the Judicial Administration Committee regarding this matter. After a brief discussion, Prof. Peterson agreed to contact Mr. Bloom and inquire further into the precise rule change being requested. This matter will carry over to the next meeting.

2. ORCP 43B (Privilege Log)

Mr. Corson received an e-mail from Mike Bloom of the Judicial Administration Committee regarding this matter. Justice Kistler inquired whether this item was raised last biennium. Prof. Peterson stated that it was mentioned in passing during the discussion on Rule 43 but that the Council had decided not to take up the matter at that time.

After some discussion on the merits of requiring a privilege log by rule, Mr. Buckle requested that Prof. Peterson contact Mr. Bloom and inquire

more specifically about the issue. This matter will carry over to the next meeting.

3. ORCP 47C (Page Limit for Summary Judgment Motions)

Mr. Corson received an e-mail from Mike Bloom of the Judicial Administration Committee regarding this matter. After a brief discussion, Prof. Peterson agreed to contact Mr. Bloom and inquire further into the precise rule change being requested. This matter will carry over to the next meeting.

B. ORCP 44/54A: Confidentiality Agreement at Settlement/Prohibit Ex Parte Conversation with Treating Physicians

Ms. O’Leary received an e-mail regarding raising these matters before the Council. The suggestions involve limiting the use of confidentiality agreements at settlement and prohibiting ex parte conversation with treating physicians (requiring that contact be through deposition only). Ms. O’Leary will inquire further into the precise rule changes being requested and bring more information to the Council at the December meeting. The matter will carry over until then.

C. ORCP 38B and C: Uniform Interstate Depositions and Discovery Act

Prof. Peterson reported that the Multnomah County Court Administrator raised this issue last biennium. Mr. Corson had noted that a new draft version was available and suggested adding it to the agenda for review.

Prof. Peterson explained that the Act has not yet been adopted but the basic effect would allow an out-of-state litigant to go directly to a court clerk in Oregon and file a subpoena – without requiring that it be presented by an Oregon lawyer – and get an Oregon subpoena issued. Further, the Act did not restrict the site of the deposition to a county in which the Oregon deponent lives or works. If the deponent wants any relief, he or she may obtain review by a circuit court judge where the Oregon subpoena was issued and relief from the subpoena would be under the Oregon rules. He indicated that ORCP 38 may need to be updated, as it may be out of compliance.

Mr. Cooper inquired whether this would mean that no lawyer or judge in Oregon would get to look at the subpoena and vet it. Prof. Peterson said yes and asked whether this was an issue that the Council should look at in advance of the Interstate Act’s passage to get ahead of the curve.

Judge Miller stated that the Council could look at Rule 38 and try to make it better but not exclude judicial review. Mr. Cooper suggested that the Council remain aware but do nothing at this time. Judge Isaacson stated that adoption of the Act

could have an adverse affect on the public and that perhaps the Council should form a committee to list those effects. Prof. Peterson indicated that Douglas Bray, the Multnomah County Court Administrator, stated that Rule 38 is out of date. Prof. Peterson will talk to Mr. Bray. Prof. Peterson will also find out when the Act is being voted on for approval. The matter will carry over until the December meeting.

A summary copy of the proposed Act is attached as Appendix C.

VII. Adjournment

Mr. Buckle adjourned the meeting at 11:57 a.m.

Respectfully submitted,

Mark A. Peterson
Executive Director

Council on Court Procedure
Sub-Committee on ORCP 19B (Affirmative Defenses)
Kristen David (Chair), Hon. Jerry Hodson, Brian Campf.

- I. **Query:** Should ORCP 19B be revised and updated?
- II. **Conclusion:** It is the subcommittee's position that there is not a pressing need to change ORCP 19B at this time.
- III. **Discussion:** The subcommittee discussed a number of possible changes to ORCP 19B since the September 15, 2007 meeting. The subcommittee raised concern of the doctrine of variance which can restrict a party from presenting evidence (simply because a theory had not been pled as an affirmative defense) versus the ability of a party to present evidence under a general denial. (See, *State v. Olmstead*, 310 Or 455, 800 P2d 277 (1990) and *Marcoulier v. Umstead*, 105 Or App 260 (1991).) Specifically, the subcommittee discussed the following issues:
 - A. Unclean Hands: After review of recent case law on "unclean hands," it was determined that a party need not plead it as an affirmative defense since a Court could apply the doctrine on it's own as an equitable remedy. (*Osborne v. Nottley*, 206 Or App 201, 136 P3d 81 (5/31/06).)
 - B. Exhaustion of Remedies: The subcommittee discussed this doctrine and concluded that it required case by case evaluation and should not be required to be pled as an affirmative defense since often evidence may be submitted under a general denial theory.
 - C. Res Judicata/ Issue Preclusion: Discussion was held on the terminology with concern of the theories encompassed under the old verbage versus the more modern parlance. "Res judicata" (now generally termed "claim preclusion") applies to preclusion of an entire claim that has been litigated or could have been litigated. "Collateral estoppel" (now generally termed "issue preclusion") prevents relitigation of an issue decided in a previous case involving a different claim. Thus, while collateral estoppel can be considered part of the broader doctrine of res judicata, a change in the nomenclature in ORCP 19B to "preclusion" (referring to both claim and issue preclusion) could confuse those with other "estoppel" defenses. Since the Council should not be making substantive changes to the law, it was felt by the subcommittee that no changes should be made to the current listing under ORCP 19B for "estoppel" and "res judicata."
 - D. Additional Affirmative Defenses: The consensus was that the last phrase of ORCP 19B "and any other matter . . ." is sufficient to catch the more specific defenses (such as those referenced in Chapter 22 of the OSB Pleading and Practice Book), and therefore there is not a pressing need to add to the list.

Text of e-mail from Judge Roberts to Judge Hodson regarding voluntary dismissals without prejudice (ORCP 54A)

We had an interesting motion (futile) which was brought by a frustrated defendant after a year of trial prep, after the plaintiff (unable to get a continuance) utilized her opportunity to take a voluntary dismissal without prejudice, and then immediately refile the case, thus getting the re-scheduling that the defendant had successfully persuaded Judge Koch would be so prejudicial to defendant. Defendant wanted some sort of relief, hopefully to make the dismissal with prejudice, or at least to assess attorney fees (not available under the claim involved). No dice of course.

The defendant felt badly used and suffered expense and so on, but had no remedy because it is an absolute right to dismiss five days before trial and such dismissal is without prejudice and the court does not have authority under the rule to impose conditions (unlike a dismissal which does not fit into the conditions allowing a plaintiff to dismiss on a notice of dismissal). I told them that my sympathy was about all I could give them, and while perhaps (given the amount of investment that usually has gone into trial by five days before trial) the rule giving plaintiff's one shot at this, no questions asked, was unrealistic but c'est la vie -- it would be a question for you folks.

So the question is, whether the rule should be amended so that the court would have some discretion if the voluntary dismissal is prejudicial to the defendant, or whether the 'five days' rule should be at least pushed back to a time before the likely heavy-duty trial preparation is done -- say 45 days prior to trial -- allowing dismissal later than that only with the court's order and upon such conditions as are just?

FOR APPROVAL

**UNIFORM INTERSTATE DEPOSITIONS AND
DISCOVERY ACT**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-FIFTEENTH YEAR
PASADENA, CALIFORNIA
JULY 27 – AUGUST 3, 2007

**UNIFORM INTERSTATE DEPOSITIONS AND
DISCOVERY ACT**

UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Interstate Depositions and Discovery Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) “Foreign jurisdiction” means a state other than this state.

(2) “Foreign subpoena” means a subpoena issued under authority of a court of record of a foreign jurisdiction.

(3) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(4) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, [federally recognized Indian tribes], or any territory or insular possession subject to the jurisdiction of the United States.

(5) “Subpoena” means a document, however denominated, issued under authority of a court of record requiring a person to:

(A) attend and give testimony at a deposition;

(B) produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or

(C) permit inspection of premises under the control of the person.

SECTION 3. ISSUANCE OF SUBPOENA.

(a) A party may submit a foreign subpoena to a clerk of court in the [county, district, circuit, or parish] in which discovery is sought to be conducted in this state. The request for and issuance of a subpoena in this state under this act shall not constitute making an appearance in the courts of this state.

(b) When a party submits a foreign subpoena to a clerk of court in this state, the clerk, in accordance with local procedure, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed. The subpoena must incorporate the terms used in the foreign subpoena and 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.

SECTION 4. SERVICE OF SUBPOENA. A subpoena issued by a clerk of court under Section 3 shall be served in compliance with [cite applicable rules or statutes of this state for service of subpoena].

SECTION 5. DEPOSITION, PRODUCTION, AND INSPECTION. When a subpoena issued under Section 3 commands a person to attend and give testimony at a deposition, produce designated books, documents, records, electronically stored information, or tangible things, or permit inspection of premises, the time and place and the manner of the taking of the deposition, the production, or the inspection must comply with [cite applicable rules or statutes of this state].

SECTION 6. APPLICATION TO COURT. An application to the court for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court under

Section 3 must comply with the applicable rules or statutes of this state and be submitted to the court in the [county, district, circuit, or parish] in which discovery is to be conducted.

SECTION 7. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 8. APPLICATIONS TO PENDING ACTIONS. This [act] applies to requests for discovery in cases pending on the effective date of this [act].

SECTION 9. EFFECTIVE DATE. This [act] takes effect ____.