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Obtaining Out-of-State Evidence for State Court Civil Litigation: Where to Start?

by Rebecca Phalen

You are working on the discovery plan for your case, brainstorming the evidence that you need to prosecute or defend your case.

Even though your case is pending in a Georgia state court, your discovery plan is likely to list witnesses or evidence outside Georgia.

You know that a subpoena issued from a Georgia state court has no power outside the state lines.¹ But you also know that you can use deposition testimony when the deponent is out of reach of a subpoena,² and you can use documents that are otherwise admissible and have the proper foundation. You can reach witnesses and documents outside Georgia through an enforceable subpoena. Each state has a procedure in place to allow you to compel testimony or the production of documents located in that state. This guide will start you on the right path to getting the evidence you need wherever it is located.

What procedure does each state follow to issue a subpoena for cases pending elsewhere?

In federal courts you start with one rule, Rule 45, and the attorney in the underlying litigation can sign



a subpoena that is to be served in another district.³ But for litigation in state courts, each state has its own procedure for issuing and enforcing a subpoena for cases pending outside that state. Sometimes the state's procedure varies by county.⁴ Before you can compel a witness to provide testimony or produce documents in another state, you must find and follow that state's procedure.

The trend among the states is towards adopting the Uniform Interstate Depositions and Discovery Act (UIDDA), but not all states have adopted it yet. Some states, like Georgia, may require the attorney in the out-of-state action to present a commission to the clerk in the state where the witnesses or documents are located before the clerk will issue the subpoena. Other states require an application to be filed as a civil action, while still other states have procedures everywhere in between. These procedures are outlined below with cites to each state's statutes or rules.

Uniform Interstate Depositions and Discovery Act

The UIDDA permits a party to submit the "foreign subpoena" (the subpoena from the underlying litigation) to the clerk of court where the discovery is sought.⁵ The clerk must then issue a subpoena for service, and that subpoena must incorporate the terms used in the foreign subpoena and list the contact information for all counsel of record in the underlying litigation.⁶ The UIDDA eases concern about the unauthorized practice of law by clarifying that requesting the issuance of the subpoena does not constitute an appearance before the court.⁷ Under the UIDDA, the subpoena is to be served in accordance with the discovery state's law.⁸ It also provides the procedure to challenge or enforce the subpoena: an application is to be filed in the discovery state with the clerk of court that issued the subpoena.⁹

Even if a state has adopted the UIDDA, you must review that state's version. A couple of states have added different reciprocity requirements.¹⁰ For example, Utah's UIDDA only applies if the other state has adopted "provisions substantially similar to this uniform act."¹¹ Because Georgia has not (yet) adopted the UIDDA, Georgia attorneys must look to the alternative process in Utah.¹² Virginia's reciprocity requirement, however, allows a "predecessor uniform act" to suffice.¹³ Since Georgia has adopted the Uniform Foreign Depositions Act, then Georgia attorneys should be able to use Virginia's UIDDA procedure.

The states that have adopted the UIDDA, or a substantially similar statute, are: California,¹⁴ Colorado,¹⁵ District of Columbia,¹⁶ Delaware,¹⁷ Idaho,¹⁸ Indiana,¹⁹ Kansas,²⁰ Kentucky,²¹ Maryland,²² Mississippi,²³ Montana,²⁴ Nevada,²⁵ New Mexico,²⁶ New York,²⁷ North Carolina,²⁸ South Carolina,²⁹ Tennessee,³⁰ Utah,³¹ Virgin Islands³² and Virginia.³³ Earlier this year, bills to enact the UIDDA were introduced in Georgia³⁴ and Pennsylvania,³⁵ but those bills did not pass.

In Georgia, the bill to adopt the UIDDA passed the House, but the Senate passed an amendment to the bill to bifurcate it so that Part I of the bill would be in effect until the effective date of the revised evidence code, and Part II—with updated code citations—would be effective upon the effective date of the revised evidence code.³⁶ This bifurcation would permit the UIDDA to remain in effect seamlessly without any needed house-keeping measures. But when the bill as amended went back to the House, the House proposed an amendment to introduce a reciprocity provision so that the UIDDA process could only be used if the state where the underlying case is pending has adopted a similar procedure.³⁷ Interestingly, Georgia's proposed version of the UIDDA would keep a modified version of the current statute as

an alternative procedure so that there would still be a mechanism available to out-of-state attorneys should a state have not adopted a law governing the underlying action similar to the UIDDA.³⁸ The House passed the amendment with the reciprocity provision, so the Senate will likely address this amendment next year.

UFDA and Subpoenas Issued with a Commission

The Uniform Foreign Depositions Act (UFDA) remains in place in several states. It is a predecessor act of the UIDDA, adopted by the National Conference of Commissions on Uniform State Laws in 1920. It states:

Whenever any mandate, writ or commission is issued from any court of record in any foreign jurisdiction, or whenever upon notice or agreement it is required to take the testimony of a witness in this state, the witness may be compelled to appear and testify in the same manner and by the same process as employed for taking testimony in matters pending in the courts of this state.³⁹

The states that still have the UFDA, or a similar statute, are: Florida,⁴⁰ Georgia,⁴¹ Louisiana,⁴² Nebraska,⁴³ New Hampshire,⁴⁴ Ohio,⁴⁵ Oregon,⁴⁶ Rhode Island,⁴⁷ South Dakota,⁴⁸ Texas⁴⁹ and Wyoming.⁵⁰

If your witness is located in one of these states, then your first step should be to call the clerk of court in the county or parish where the witness is located. The clerk may require a notice of deposition, a commission or even a miscellaneous action to issue the subpoena. It is unlikely that local counsel is required for these states (with the exception of Oregon)—at least until the subpoena needs to be enforced.

Issued Without Court Intervention

A few states allow either the clerk of court or another person to issue the subpoena without filing a separate action. In these states, because you are not entering an appearance before the court—requesting the subpoena is more of an administrative task—you should not be required to hire local counsel.⁵¹ Only when you need the court to enforce the subpoena will you need local counsel.

These states are: Arkansas,⁵² Connecticut,⁵³ Iowa,⁵⁴ Massachusetts,⁵⁵ Minnesota⁵⁶ and North Dakota.⁵⁷ Some of these states only require a notice of deposition from the foreign state. Other states only need evidence that the deposition is permitted under the foreign state's law, and a commission may be the way to meet that requirement. Because the judge in the discovery state is not familiar with the facts of the underlying litigation, the judge in the discovery state may be more likely to enforce a subpoena that was accompanied by a commission signed by the judge familiar with the litigation. A call to the clerk is recommended, but you should first review the applicable statute or rule so that you are an informed caller.

Issued with Court Involvement

Other states, however, require greater court action before they will issue the subpoena. Some will require you to file an application or motion in the discovery state's court before the subpoena can issue, and an application or motion will require local counsel. Those states are: Alaska,⁵⁸ Arizona,⁵⁹ Hawaii,⁶⁰ Illinois,⁶¹ Maine,⁶² Massachusetts,⁶³ Michigan,⁶⁴ Missouri,⁶⁵ New Jersey,⁶⁶ Pennsylvania,⁶⁷ Vermont⁶⁸ and West Virginia.⁶⁹ The statutes in some other states, however, seem to require court action, but not necessarily that you file an application or petition. Those states are: Alabama,⁷⁰ Oklahoma,⁷¹ Washington⁷² and

Wisconsin.⁷³ Given the unclear procedure in those states, you should call the clerk of court to determine their procedure. If that call is not enlightening, then local counsel should be engaged.

Should You Hire Local Counsel?

Even if local counsel is not required, if you anticipate any resistance to the subpoena, then you may gain a strategic advantage by hiring local counsel before you seek the subpoena. Hiring local counsel, and including that name on the subpoena, will alert the deponent and your opposing counsel that you have counsel ready to enforce the subpoena.

Not only can hiring local counsel give you a strategic advantage, but also local counsel can answer several questions related to the mechanics and logistics of issuing and serving a subpoena out of state:

- What methods of service are permitted?
- What are the witness and mileage fees?
- How long will it take to have the subpoena issued?
- Does the state require a specific notice period for the subpoena?
- Are there any concerns about the type of information sought, especially in cases in which protected health information is requested?⁷⁴
- Is the commission that you intend on requesting from the Georgia court sufficient?
- Who are reputable process servers and court reporters?

Local counsel can also advise you of any requirements that you be admitted *pro hac vice* to take the deposition⁷⁵ and any other unauthorized practice of law concerns. Typically, because you are licensed to practice law in Georgia and you are taking the deposition for a matter pending in Georgia, there should not be unauthorized practice of law issues, but you should

check the rule of the state from which you are seeking discovery.⁷⁶

The additional up-front cost for hiring local counsel ensures that the subpoena is issued and served properly—meeting your ultimate goal of having an enforceable subpoena. To provide certainty to your client on costs, local counsel should offer this assistance for a flat rate.

If you are pursuing evidence in a state that does not require local counsel, then review that state's statutes, which will answer most of these questions. After you are familiar with those statutes, then you can make an informed call to the clerk of court.

What Documents Do You Need From the Georgia Court to Get Started?

The state's statute or rule, as identified above, will determine the documents you need from the Georgia court. Conversations with local counsel may also alert you to other requirements.

Notice of Deposition

You may only need a notice of deposition for the other state to issue the subpoena. If you need documents from the deponent, then add the document request to the notice.⁷⁷ Even if the other state does not require a notice of deposition, a Georgia ethics opinion may. In Advisory Opinion 40, the State Disciplinary Board cautioned against the misuse of subpoenas when serving subpoenas on nonparty witnesses.⁷⁸ A subpoena should only be issued for depositions that have been scheduled by agreement or "where a notice of deposition has been filed and served on all parties, and should not be issued when no deposition has been scheduled."⁷⁹ This notice requirement is to allow parties to the litigation to contest the relevancy, confidentiality or privileged nature of the material requested.⁸⁰

Georgia Subpoena

For the states that require the submission of the Georgia subpoena,

including those that have adopted the UIDDA, the Georgia Civil Practice Act allows only for subpoenas for deposition, although a document request can be included.⁸¹ Therefore, even if the discovery state, unlike Georgia, permits a subpoena for documents alone and you only want documents, in states that require the subpoena to incorporate the terms of the subpoena in the underlying action,⁸² the subpoena issued from the discovery state must include the request for deposition. You can then outline in the cover letter that you will accept the documents (with any necessary certification to lay the evidentiary foundation) in lieu of the deposition.


Commission

For those states that require a commission, Georgia courts have the authority to issue commissions

under the Georgia Civil Practice Act. The courts can issue a commission for the taking of depositions when it is “necessary or convenient” and upon “application and notice.”⁸³ The commission may designate an officer to take the deposition by name or descriptive title.⁸⁴ You may be able to obtain consent from opposing counsel for a commission or you may have to file a motion for issuance of the commission showing why the commission is necessary or convenient for your case.

And You’ve Made It Through the Maze.

So continue brainstorming about the evidence that you need for your case—without feeling trapped by state lines. There is a way to reach the evidence. This guide provides

the procedure so that you can focus on the substantive issues facing your client. 



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APPENDIX I Out-of-State Subpoena Citations

State where you need discovery	Method	Statute or Rule
Alabama	Issued with court involvement	ALA. R. CIV. P. 28(c)
Alaska	Issued with court involvement	ALASKA R. CIV. P. 28(c)
Arizona	Issued with court involvement	ARIZ. R. CIV. P. 30(h)
Arkansas	Issued without court involvement	ARK. R. CIV. P. 45(f)
California	Similar to UIDDA	CAL. CIV. PROC. CODE §§ 2029.100 -.900 (West 2011)
Colorado	UIDDA	COL. REV. STAT. ANN. §§ 13-90.5-101 to -107 (West 2011)
Connecticut	Issued without court involvement	CONN. GEN. STAT. §§ 52-148e(f), 52-155 (2011); CONN. R. SUPER. CT. CIV. § 13-28(g)
District of Columbia	UIDDA	D.C. CODE §§ 13-441 TO -448 (2011); D.C. R. CIV. PROC. 28-1; D.C. CODE § 14-103 (2011)
Delaware	UIDDA	DEL. CODE ANN. tit. 10, § 4311 (2011)
Florida	UFDA	FLA. STAT. ANN. § 92.251 (West 2011)
Georgia	UFDA	O.C.G.A. §§ 24-10-110 to -112 (West 2011)
Hawaii	Issued with court involvement	HAW. REV. STAT. § 624-27 (2011)
Idaho	UIDDA	ID. R. CIV. P. 45(i)
Illinois	Issued with court involvement	I.L.C.S. S. CT. RULE 204(b)
Indiana	UIDDA	IND. CODE §§ 34-44.5-1-1 to -44.5-1-11 (2011); IND. R. TRIAL PROC. 28(E)
Iowa	Issued without court involvement	IOWA CODE ANN. § 622.84 (West 2011)
Kansas	UIDDA	KAN. STAT. ANN. § 60-228a (2010)
Kentucky	UIDDA	KY. REV. STAT. ANN. § 421.360 (2011)

State where you need discovery	Method	Statute or Rule
Louisiana	UFDA	LA. REV. STAT. ANN. § 13:3821 (2011)
Maine	Issued with court involvement	ME. R. CIV. P. 30(h)
Maryland	UIDDA	MD. CODE ANN., CTS. & JUD. PROC. §§ 9-401 to -407 (2011)
Massachusetts	Issued without court involvement; alternative procedure requires court involvement	MASS. GEN. LAWS ANN. ch. 223A, § 11 (2011); MASS. GEN. LAWS ch. 233, § 45 (2011)
Michigan	Issued with court involvement	MICH. RULES M.C.R. 2.305(E); MICH. COMP. LAWS § 600.1852(2) (2011)
Minnesota	Issued without court involvement	MINN. R. CIV. P. 45.01(d)
Mississippi	UIDDA	2011 Miss. Laws 347 (S.B. No. 2264); Miss. R. CIV. P. 45(a)(3)
Missouri	Issued with court involvement	MO. SUPREME COURT R. 57.08; MO. ANN. STAT. § 492.100 (West 2011)
Montana	UIDDA	MONT. R. CIV. P. 28(d) (Effective Oct. 1, 2011)
Nebraska	Similar to UFDA	NEB. CT. R. DISC. § 6-328(e)
Nevada	UIDDA	2011 Nev. Legis. Serv. 10 (A.B. 87)
New Hampshire	Similar to UFDA	N.H. REV. STAT. ANN. § 517-A:1 (2011); N.H. REV. STAT. ANN. § 517:18 (2011)
New Jersey	Issued with court involvement	N.J. R. OF CT. 4:11-4
New Mexico	UIDDA; alternative procedure with court involvement	N.M. DIST. CT. CIV. PROC. R. 1-045.1; N.M. STAT. § 38-8-1 (2011)
New York	UIDDA	N.Y. C.P.L.R. 3119 (McKINNEY 2011)
North Carolina	UIDDA (eff. Dec. 1, 2011)	N.C. Sess. Laws 2011-247 (H.B. 379) (To Be Codified In N.C. GEN. STAT. §§ 1F-1 to 1F-7) (Effective Dec. 1, 2011)
North Dakota	Issued without court involvement	N.D. R. CIV. P. 45(a)(3)
Ohio	UFDA	OHIO REV. CODE ANN. §§ 2319.08 - .09 (West 2011)
Oklahoma	Issued with court involvement	OKLA. STATA. ANN. tit. 12, § 2004.1 (2011)
Oregon	UFDA, but local counsel requirement	OR. R. CIV. P. 38(C); UNIF. TRIAL CT. R. 5.140
Pennsylvania	Issued with court involvement	42 PA. CONS. STAT. ANN. § 5326 (WEST 2011)
Rhode Island	similar to UFDA	R.I. GEN. LAWS § 9-18-11 (2011).
South Carolina	UIDDA	S.C. CODE ANN. §§ 15-47-100 to -160 (2010); S.C. R. CIV. PROC. 28(d)
South Dakota	UFDA	S.D. CODIFIED LAWS § 19-5-4 (2011)
Tennessee	UIDDA	TENN. CODE. ANN. §§ 24-9-201 to -207 (West 2011).
Texas	similar to UFDA	TEX. CIV. PRAC. & REM. CODE ANN. § 20.002 (VERNON 2011)
Utah	UIDDA	UTAH CODE ANN. §§ 78B-17-101 to -302 (WEST 2011); UTAH R. CIV. PROC. 26(h)
Vermont	Issued with court involvement	VT. R. CIV. P. 28(d)
Virgin Islands	UIDDA	V.I. CODE ANN. tit. 5, §§ 4922-4925B (2011)
Virginia	UIDDA	VA. CODE ANN. § 8.01-412.8 to 412.15 (West 2011)
Washington	Issued with court involvement	WASH. SUPER. CT. CIV. R. 45(e)(4)
West Virginia	Issued with court involvement	W. VA. R. CIV. P. 28(d)
Wisconsin	Issued with court involvement	WIS. STAT. ANN. § 887.24 (West 2011)
Wyoming	UFDA	WYO. STAT. ANN. § 1-12-115 (2011)

Endnotes

1. O.C.G.A. § 24-10-21 (2011) (limiting place of service of subpoena to places within the state); *see also* Parrott v. Edwards, 113 Ga. App. 422, 427, 148 S.E.2d 175, 180 (1966) (nonparty who was resident of another state was beyond the subpoena power of Georgia courts).
2. O.C.G.A. § 9-11-32(a)(3)(D) (2011).
3. FED. R. CIV. P. 45(a)(3). Different districts, even within the same judicial circuit, have interpreted the service requirement under Rule 45 differently, so one must undertake additional research. *See, e.g.*, Hall v. Sullivan, 229 F.R.D. 501 (D. Md. 2005) (denying nonparty's motion to quash subpoena because Federal Express delivery was sufficient delivery; in-hand personal service of subpoena is not required for subpoenas that only require a document production). *Compare Klockner Namasco Holdings Corp v. Daily Access.com, Inc.*, 211 F.R.D. 685 (N.D. Ga. 2002) (denying motion for sanctions for failure to appear at deposition because personal service of subpoena was required), *with* In re Falcon Air Express, Inc., No. 06-11877-BKC-AJC, 2008 WL 2038799 (S.D. Fla. May 8, 2008) (rejecting "as antiquated the so-called majority position interpreting Rule 45 as requiring personal service, and instead [adopting] the better-reasoned, modern, emerging minority position, which holds that substitute service of a subpoena is effective on a nonparty witness under Rule 45," rejecting Klockner).
4. The United States Postal Service website has a tool to locate the county by address. *See* ZIP Code Lookup, UNITED STATES POSTAL SERVICE, <http://zip4.usps.com/zip4/welcome.jsp> (enter address, then click on "Mailing Industry Information") (last visited Aug. 11, 2011).
5. UNIF. INTERSTATE DEPOSITIONS & DISCOVERY ACT § 3 (2007). The full text of the UIDDA and comments from the National Conference of Commissioners on Uniform State Laws is located at http://www.law.upenn.edu/bll/archives/ulc/iddda/2007act_final.htm (last visited Aug. 11, 2011).
6. UIDDA § 3(c) (2007).
7. *Id.* § 3(a).
8. *Id.* § 4 and Comment.
9. *Id.* § 6.
10. UTAH CODE ANN. § 78B-17-103 (West 2011); VA. CODE ANN. § 8.01-414 (West 2011).
11. UTAH CODE ANN. § 78B-17-103 (West 2011).
12. UTAH R. CIV. P. 26(h); *see also* How to Take a Deposition in Utah for a Case from Another State, UTAH STATE COURTS, <http://www.utcourts.gov/resources/attorney/outofstateattorney/> (last visited Aug. 11, 2011).
13. VA. CODE ANN. § 8.01-412.14 (West 2011).
14. CAL. CIV. P. CODE §§ 2029.100-.900 (West 2011); *see also* Judicial Council Forms, CALIFORNIA COURTS, <http://www.courts.ca.gov/forms.htm> (last visited Aug. 11, 2011). Forms SUBP-030, SUBP-035, SUBP-040, SUBP-045, and SUBP-050 pertain to subpoenas for actions pending outside California.
15. COLO. REV. STAT. ANN. §§ 13-90.5-101 to -107 (West 2011); *see also* Issuing Out of State Subpoena Forms, COLORADO STATE JUDICIAL BRANCH, http://www.courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=117 (last visited Aug. 7, 2011).
16. D.C. CODE §§ 13-441 to -448 (2011). The District of Columbia also still has the Uniform Foreign Depositions Act on the books. D.C. CODE § 14-103 (2011). Rule of Civil Procedure 28-1(b) provides an alternative procedure, requiring a certified copy of the commission or notice to be filed and a judge's approval before the clerk can issue the subpoena. D.C. R. CIV. P. 28-1; *see also* Clarification of Uniform Interstate Depositions and Discovery Act (UIDDA) in the District of Columbia, INSURANCE DEFENSE BLOG, (Jan. 5, 2011, 2:40 PM), <http://www.insurancedefenseblog.us/2011/01/clarification-of-uniform-interstate-depositions-and-discovery-act-uidda-in-the-district-of-columbia.html> (noting, also, the exception for medical records request, in which an appearance before the court must be made under D.C. Code § 14-307).
17. DEL. CODE ANN. tit. 10, § 4311 (2011).
18. IDAHO R. CIV. P. 45(i).
19. IND. CODE §§ 34-44.5-1-1 to -44.5-1-11 (2011) (UIDDA). The previous method also remains on the books. IND. R. TRIAL P. 28(E) (court may order person to provide testimony, documents, inspections, or mental examination upon application or in response to a letter rogatory). In fact, the Marion County Clerk's office has information only on how to have a subpoena issued under Indiana Trial Rule 28(E), available at <http://www.indy.gov/eGov/County/Clerk/Court/Filings/Pages/OutOfStateLitigants.aspx> (last visited Aug. 11, 2011).
20. KAN. STAT. ANN. § 60-228a (2010).
21. KY. REV. STAT. ANN. § 421.360 (West 2011).
22. MD. CODE ANN., CTS. & JUD. PROC. §§ 9-401 to -407 (West 2011).
23. 2011 Miss. Laws 347 (S.B. No. 2264). The passage of this section did not affect the prior method of obtaining out-of-state subpoenas, thus providing an alternate method. Miss. R. CIV. P. 45(a)(3) (clerk can issue a subpoena upon submission of the foreign subpoena).
24. MONT. R. CIV. P. 28(c) (effective Oct. 1, 2011). Before October 1, 2011, the previous rule remains in effect. MONT. R. CIV. P. 28(d) (district court may issue the subpoena upon proof that notice has been duly served).
25. 2011 Nev. Legis. Serv. 10 (A.B. 87) (effective Oct. 1, 2011). This bill repeals the UFDA.
26. N.M. DIST. CT. CIV. P. R. 1-045.1. An alternative procedure permits the New Mexico judge to issue an order directing a witness to provide testimony or documents. N.M. STAT. ANN. § 38-8-1 (2011).
27. N.Y. C.P.L.R. 3119 (McKINNEY 2011).
28. The North Carolina Uniform Interstate Depositions and Discovery Act becomes effective on December 1, 2011. 2011 N.C. Sess. Laws 247 (H.B. 379) (to be codified in N.C. GEN. STAT. §§ 1F-1 to 1F-7). Before December 1, 2011, N.C. Gen. Stat. Ann. § 1A-1, Rule 28(d) (2010) remains in effect (present a commission, order, notice, or consent to the judge and it "shall be the duty of the judge" to issue the subpoena). Beginning on December 1, 2011, under H.B. 379, Rule 28(d) will be amended

- to apply only to depositions to be used in foreign countries. For local rule requirements regarding the taking of the deposition once the subpoena is issued, see Posting of Mack Sperling to North Carolina Business Litigation Report, <http://www.ncbusinesslitigationreport.com/2009/10/articles/professional-responsibility-1/out-of-state-counsel-depositions-and-pro-hac-vice-admissions-in-north-carolina/> (Oct. 26, 2009).
29. S.C. CODE ANN. §§ 15-47-100 to -160 (2010). The previous rule was not repealed, allowing an attorney or the clerk of court to issue a subpoena after filing a commission with the South Carolina court. S.C. R. CIV. P. 28(d). The South Carolina Supreme Court has noted that Rule 28(d) is consistent with South Carolina's UICDA. Order re South Carolina Rules of Civil Procedure, 2011 Note (April 28, 2011), <http://www.judicial.state.sc.us/courtReg/displayRule.cfm?ruleID=28.0&subRuleID=&ruleType=CIV> (amending note to Rule 28 in a Court Rule Maintenance Order).
 30. TENN. CODE ANN. §§ 24-9-201 to -207 (West 2011).
 31. UTAH CODE ANN. §§ 78B-17-101 to -302 (West 2011); *see also* UTAH R. CIV. P. 26(h) (providing that subpoena can issue upon filing of notice of deposition with the clerk). The website for Utah State Courts has provided information on how to take a deposition in Utah for a case from another state at <http://www.utcourts.gov/resources/attorney/outofstateattorney/> (last visited Aug. 11, 2011).
 32. V.I. CODE ANN. tit. 5, §§ 4922-4925B (2011).
 33. VA. CODE ANN. §§ 8.01-412.8 to -412.15 (West 2011).
 34. *See* H.B. 46, 151st Gen. Assemb., Reg. Sess. (Ga. 2011), *available at* http://www1.legis.ga.gov/legis/2011_12/sum/hb46.htm (last visited Aug. 11, 2011).
 35. *See* S.B. 79, Gen. Assemb., Reg. Sess. (Pa. 2011).
 36. *See* H.B. 46, 151st Gen. Assemb., Reg. Sess. (Ga. 2011), *available at* http://www1.legis.ga.gov/legis/2011_12/sum/hb46.htm (last visited Aug. 11, 2011) (Senate amendment at Version 2).
 37. Comments of Rep. Mike Jacobs, Afternoon House Session 3 at 1:06:35, *video available at* <http://www.gpb.org/lawmakers/2011/day-40-sine-die> (last visited Aug. 11, 2011).
 38. *See* H.B. 46, 151st Gen. Assemb., Reg. Sess. (Ga. 2011) (proposed sections 24-10-113 and 24-13-113).
 39. *See* Comments to Uniform Interstate Depositions & Discovery Act (2007), NATIONAL CONF. OF COMMISSIONERS ON UNIFORM STATE LAWS, http://www.law.upenn.edu/bll/archives/ulc/iddda/2007act_final.htm (last visited Aug. 11, 2011).
 40. FLA. STAT. ANN. § 92.251 (West 2011).
 41. O.C.G.A. §§ 24-10-110 to 112 (2011).
 42. LA. REV. STAT. ANN. § 13:3821 (2011).
 43. NEB. CT. R. DISC. § 6-328(e).
 44. N.H. REV. STAT. ANN. § 517- A:1 (2011); N.H. REV. STAT. ANN. § 517:18 (2011).
 45. OHIO REV. CODE ANN. §§ 2319.08 - .09 (West 2011).
 46. OR. R. CIV. P. 38(c); UNIF. TRIAL CT. R. 5.140 (requiring either local counsel or the party to present the commission in person to register the document).
 47. R.I. Gen. Laws § 9-18-11 (2011) (statute similar to UFDA).
 48. S.D. CODIFIED LAWS § 19-5-4 (2011).
 49. TEX. CIV. PRAC. & REM. CODE ANN. § 20.002 (VERNON 2011) (statute similar to UFDA).
 50. WYO. STAT. ANN. § 1-12-115 (2011).
 51. *See, e.g.*, Ala. Rules Governing Admissions, R. 7 (must be admitted *pro hac vice* to appear as counsel before any court); Conn. Rules of Super. Ct. Regulating Admission to the Bar § 2-16 (*pro hac vice* admission required to participate in "the presentation of a cause or appeal in any court of this state").
 52. ARK. R. CIV. P. 45(f) (clerk shall issue a subpoena when a party files a certified copy of the notice of deposition).
 53. CONN. GEN. STAT. §§ 52-148e(f), 52-155 (2011); CONN. R. SUPER. CT. CIV. § 13-28(g). Depositions can be taken of Connecticut witnesses in the same manner as matters pending in Connecticut "on application" of any party to the underlying civil action. This language implies that a commission should be obtained from the court where the action is pending. Then the subpoena could be issued "in like manner" by a judge, clerk, notary public, or commissioner. CONN. R. SUPER. CT. CIV. § 13-28(b). The State of Connecticut Judicial Branch has provided instructions for deposing a Connecticut resident, stating that a Connecticut attorney or notary public may issue the subpoena or that the out-of-state attorney may apply for a court-ordered subpoena. Out of State Commission to Depose a Connecticut Resident, (Dec. 15, 2010), <http://www.jud.ct.gov/CivilProc/depose.pdf>.
 54. IOWA CODE ANN. § 622.84 (West 2011). The statute permits the "person authorized to take the depositions" to issue the subpoena when another state's laws allow a deposition to be taken. Although not stated in the statute, a commission may be a way to show that the state in the underlying action has allowed the deposition to be taken. In Iowa, clerks or attorneys may issue subpoenas. IOWA R. CIV. P. 1.1701(2).
 55. MASS. GEN. LAWS ch. 233, § 45 (2011) (person can be summoned to give deposition in case pending in another state in same manner as summoning witnesses before court, likely need commission) (one of two alternative procedures in Massachusetts); *see also* MASS. GEN. LAWS ch. 233, § 1 (2011) (stating that a clerk, notary public, or justice of the peace may issue summonses).
 56. MINN. R. CIV. P. 45.01(d) (subpoena can be issued by court administrator or Minnesota attorney provided deposition "is allowed" and has been properly noticed where action is pending).
 57. N.D. R. CIV. P. 45(a)(3) (clerk can issue subpoena, but party must file proof of service of notice or file letter of request from court where action is pending).
 58. ALASKA R. CIV. P. 28(c) (upon motion, court may order issuance of subpoena when a deposition is to be taken pursuant to the laws of another jurisdiction).
 59. ARIZ. R. CIV. P. 30(h) (must file an application as a civil action under oath and with other requirements, including attaching a notice, order from foreign state, commission, or letter rogatory).
 60. HAW. REV. STAT. § 624-27 (2011) (present verified petition when a

commission has been issued or where notice has been given in underlying action).

61. I.L.C.S. S. Ct. R. 204(b) (petition the court for a subpoena to compel the testimony of the deponent). The Clerk of the Circuit Court of Cook County, Illinois, provides the procedures for obtaining a subpoena for deposition for a case pending in another state. Deposition for a Case Pending in Another State, CLERK OF THE CIRCUIT COURT, COOK COUNTY, ILLINOIS, <http://198.173.15.34/?section=DDPage&DDPage=3300> (click "Procedures") (last visited Aug. 11, 2011).
62. ME. R. CIV. P. 30(h) (must file an application before clerk may issue a subpoena; statute expressly requires local counsel).
63. MASS. GEN. LAWS ch. 223A, § 11 (2011) (court may order person to give testimony or documents upon application or in response to a letter rogatory); *see also* MASS. GEN. LAWS ch. 233, § 45 (2011) (providing an alternative process).
64. MICH. RULES M.C.R. 2.305(E) (person authorized to take deposition may petition the court for a subpoena to give testimony or produce documents); MICH. COMP. LAWS § 600.1852(2) (2011) (court may order person to give testimony or produce documents upon application or in response to a letter rogatory); *see also* Ewin v. Burnham, 728 N.W.2d 463, 465 (Mich. Ct. App. 2006) (discussing these two rules and finding that they do not conflict). The Clerk's Office in Wayne County (Detroit), Michigan has provided instructions to have out-of-state subpoena issued under Rule 2.305(E). Issuance of Subpoena Out of State Case, WAYNE COUNTY CLERK, <http://www.co.wayne.mi.us/2118.htm> (last visited Aug. 11, 2011).
65. MO. S. CT. R. 57.08 (court can direct that a subpoena issue upon *ex parte* application when a deposition is to be taken pursuant to laws of another state); MO. ANN. STAT. § 492.100 (West 2011) (commissioners appointed by another state can compel the attendance of witnesses).
66. N.J. R. OF CT. 4:11-4 (must file *ex parte* petition to order issuance of subpoena). The Superior Court of New Jersey has provided an information packet, including forms, to assist out-of-state attorneys. Out-of-State Discovery Procedure, NEW JERSEY JUDICIARY, (May 2007) <http://www.judiciary.state.nj.us/civil/forms/10518.pdf>.
67. 42 PA. CONS. STAT. ANN. § 5326 (West 2011) (court can order someone to provide testimony or produce documents upon an application or in response to a letter rogatory).
68. VT. R. CIV. P. 28(d) (judge may order issuance of a subpoena upon petition when the deposition is to be taken pursuant to the laws of another state).
69. W. VA. R. CIV. P. 28(d) (upon petition, court may order issuance of subpoena when the deposition of a person is to be taken pursuant to the laws of another state).
70. ALA. R. CIV. P. 28(c) (present a commission to the judge or proof of a duly served notice and it "shall be the duty of the judge" to issue the subpoena).
71. OKLA. STAT. ANN. tit. 12, § 2004.1 (West 2011) (district court can issue subpoena upon proof of service of notice and no requirement of petition to be filed prior to issuance).
72. WASH. SUPER. CT. CIV. R. 45(e) (4) (court may issue a subpoena when a person is authorized by the law of another state to take a deposition in Washington, with or without a commission).
73. WIS. STAT. ANN. § 887.24 (West 2011) (witness may be subpoenaed before any person authorized by the state where the action is pending, but includes reciprocity requirement). The procedure is unclear from the statute, but the code section to compel a Wisconsin resident to testify at a civil action in the foreign state requires a submission to the judge, so that may guide the court's action for deposition testimony as well. WIS. STAT. ANN. § 887.25 (West 2011).
74. *See, e.g.*, I.L.C.S. S. Ct. R. 204(c) (must have agreement of parties or order of the court to depose nonparty physicians).
75. *See* Mack Sperling, Out Of State Counsel, Depositions, And *Pro Hac Vice* Admissions In North Carolina, NORTH CAROLINA BUSINESS LITIGATION REPORT, (Oct. 26, 2009), <http://www.ncbusinesslitigationreport.com/2009/10/articles/professional-responsibility-1/out-of-state-counsel-depositions-and-pro-hac-vice-admissions-in-north-carolina/>.
76. *See, e.g.*, MODEL RULES OF PROF'L CONDUCT R. 5.5(c)(2) (lawyer admitted in another jurisdiction can provide legal service on a temporary basis in Florida when the services are reasonably related to a pending proceeding in another jurisdiction, if that lawyer is authorized by law to appear in that proceeding); FL. R. PROF'L CONDUCT 4-5.5(c)(2) (same); GA. R. PROF'L CONDUCT 5.5(c)(2) (same).
77. O.C.G.A. § 9-11-30(b)(1) (2011).
78. Advisory Op. 40, STATE BAR OF GEORGIA DISCIPLINARY BOARD (Sept. 21, 1984), http://www.gabar.org/handbook/state_disciplinary_board_opinions/adv_op_40/ (last visited Aug. 11, 2011).
79. *Id.*
80. *Id.*
81. O.C.G.A. § 9-11-45(a)(1)(C) (2011).
82. *See, e.g.*, UIDDA § 3(c) (2007); Miss. R. CIV. P. 45(a)(3).
83. O.C.G.A. § 9-11-28(b) (2011).
84. *Id.*; *see also* O.C.G.A. § 9-11-28(a) (2011).

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