

HOW TO COMPEL A "DEPOSITION"  
IN THE UNITED KINGDOM

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1. The Hague Convention - Contact the U.S. Department of State to obtain the latest guidelines concerning the taking of testimony pursuant to the Hague Convention. The most current version is attached. The testimony can be taken directly by a California attorney or one can retain a local solicitor to do it. It is preferable to do it yourself and retain a local solicitor to inform you of the local rules, to monitor the issuance and source of the citation (i.e., subpoena) pursuant to the letter of request and to assist you should a motion to quash be made in the United Kingdom.

2. Obtaining the Letter of Request - Make a motion for a letter of request to take testimony abroad using the Hague Convention (C.C.P. §2027) as authority. A copy of an appropriate letter of request is attached.

Do not under any circumstances make a motion for a "deposition" because this may be a basis for a motion to quash in the United Kingdom. In California, depositions have the dual purpose of pretrial discovery and trial testimony, if necessary. The United Kingdom does not allow pretrial discovery in civil cases and does not recognize the term "deposition." Nevertheless, pretrial testimony can be taken for use at trial and the United Kingdom commonly refers to it as a commission.

For example, in Scotland there is a local rule which specifically allows the local witness to make a motion to the court to have the order of the California court varied or recalled. (Scotland, Court of Session, Rule 102A[5]).

The State Department guidelines recommend that a list of questions to be posed should be attached to the letter of request. This list need not be exhaustive or overly detailed and should only indicate the areas of questioning. You also may wish to include a general description of the area of inquiry.

3. Submitting the Letter of Request - Send the letter of request to the appropriate central authority listed in the guidelines from the Department of State, e.g., Central Authority for Scotland. Do it at least 2-3 months before you plan to take the testimony and emphasize in a cover letter the date of the taking of the testimony with a polite request to expedite the issuance of a citation and service. Make sure your local solicitor gets copies of everything. You may want to have the local solicitor submit the request for you.

Have your local solicitor closely monitor the process. The citation will be served on the witness by the local authorities and this should be done early enough to determine whether the witness is available.

4. Court Reporter and Transcript - There is no need to arrange a court reporter because the testimony is taken in open court with the judge (properly titled a sheriff in Scotland) presiding. The court stenographer records the testimony and submits the transcript directly to the ordering court in California.

5. Court Procedure and Etiquette - Code of Civil Procedure §2027 governs oral depositions in another nation. Section 2027 provides that the procedures for taking depositions in California apply to oral depositions taken in a foreign nation, therefore, objections and other procedures should be handled just as if the proceeding were in California. Since you want to avoid reference to the term "deposition," you should stipulate with opposing counsel that C.C.P. §§2025 and 2027 apply before you go abroad. Inform the U.K. judge of your stipulation so he can be relieved of the duty to rule on objections.

Exhibits can freely be used just as in a California deposition, however, you should refer to them as "productions." Be sure to bring at least three copies of every production to the taking of the testimony. Also be sure to lay a proper foundation for admitting these exhibits at trial or, at the very least, authenticate the documents and lay a foundation for relevancy. Other witnesses may be necessary to get them admitted at trial in California.

The U.K. does not permit you to compel the production of documents as part of the taking of testimony. (See, 28 USC §1781 re the U.K.'s exceptions to the Hague Convention.)

The witness gives his testimony while standing in a witness box and the entire procedure is conducted in open court with a wigged judge or sheriff presiding. Be prepared for frequent interruptions by the judge and you will find that the judge himself will ask a few questions. United Kingdom judges take a much more active role as can be seen on Rumpole of the Bailey.

Knowledge of court etiquette is essential and will give you a distinct advantage over your opponent. For example, it is customary to bow as you enter the bar and you should always refer to the sheriff as "My Lord." Rather than saying "strike that" you should get used to saying "take that out." Other than these differences, the taking of testimony is quite similar to the examination of a witness in court in California.