

Interstate Discovery Simplified: Louisiana Passes the Uniform Interstate Depositions and Discovery Act

By Christopher D. Cazenave and Graham H. Ryan



Litigants often seek discovery across state lines. In federal court, Federal Rule of Civil Procedure 45 authorizes an attorney to simply sign a subpoena to be served in the district where the witness or evidence is located. In state court, however, each state has a particular procedure for issuing and enforcing subpoenas directed to a nonparty, out-of-state witness. The trial and error associated with navigating these state-court procedures are often vexing and, in some cases, prohibitively expensive.

On Aug. 1, 2014, Louisiana became the 33rd state to adopt the Uniform Interstate Depositions and Discovery Act (UIDDA). UIDDA significantly simplifies the process for an out-of-state litigant to obtain discovery from a state that has enacted UIDDA. Understanding Louisiana's UIDDA statute, La. R.S. 13:3825, which is substantially similar to other states' UIDDA laws, will lessen the complexity and cost for Louisiana litigants seeking out-of-state discovery in any of the 32 other states that have enacted the statute. This article offers an introduction to Louisiana's UIDDA statute, guidelines for applying UIDDA to obtain out-of-state discovery, and, in summary, a suggested plan for out-of-state discovery.

Understanding Louisiana's UIDDA Statute

The Uniform Law Commission formulated UIDDA in 2007,¹ following two previous attempts to achieve procedural uniformity for interstate discovery: the Uniform Foreign Depositions Act (UFDA) in 1920, and the Uniform Interstate and International Procedure Act in 1962.² The purpose of UIDDA is to "set forth a procedure that can be easily and efficiently followed, that has a minimum of judicial oversight and intervention, that is cost-effective for the litigants, and is fair for the deponents."³ The statute is modeled after current Federal Rule of Procedure 45, which has been well accepted by litigators seeking out-of-state evidence in federal cases.⁴

Louisiana is the latest of 33 states to adopt a form of UIDDA.⁵ In February 2014, William R. Forrester, Jr., a council member of the Louisiana State Law Institute, presented UIDDA to the Louisiana Legislature.⁶ UIDDA became House Bill 619, sponsored by Rep. Neil C. Abramson.⁷ The House of Representatives and Senate passed the bill with ease, and Gov. Jindal signed the bill into law on June 29, 2014.⁸ UIDDA is now codified as La. R.S. 13:3825, effective Aug. 1, 2014.⁹ Compared to the model act, Louisiana's version of UIDDA contains only minor changes to conform to Louisiana procedure.

The comments to La. R.S. 13:3825 provide a detailed practice guide for how the statute functions. Under UIDDA, an out-of-state attorney no longer needs to prepare letters rogatory, file an ancillary action, or navigate any other convoluted procedure before obtaining a subpoena for Louisiana discovery.¹⁰ Instead, the attorney of record in the out-of-state proceeding first obtains a subpoena in the trial state in accordance with that state's procedure.¹¹ Next, the attorney obtains a copy of the form subpoena from the clerk of court of the parish where the witness resides or the documents are located.¹² The attorney from the trial state then prepares the Louisiana form to include the same terms as the trial-state subpoena.¹³ The statute requires that, when the sub-

poena is served, it contains the names, addresses and telephone numbers of all counsel of record in the trial state and of any party not represented by counsel.¹⁴ The attorney then submits the executed trial-state subpoena and unexecuted discovery-state subpoena (*i.e.*, Louisiana subpoena) to the clerk of court.¹⁵ After applicable filing and service fees are paid by the requesting party, the clerk will then take steps necessary under any local rules to issue the subpoena and arrange for service in accordance with La. C.C.P. art. 1355.¹⁶ Once issued, the subpoena is subject to the same substantive law as any other Louisiana subpoena.¹⁷

The benefits to UIDDA are clear. The statute requires only ministerial action by the clerk, which is sufficient to subject the deponent or third party in possession of documents to jurisdiction in Louisiana.¹⁸ The trial-state attorney is required to present less documentation to the Louisiana clerk to have the subpoena issued as compared to other available methods.¹⁹ This cures the ambiguity surrounding UFDA and letters rogatory as to the documentation sufficient for the issuance of a Louisiana subpoena.²⁰ Perhaps most importantly, the trial-state attorney's submission of documents to the clerk does not constitute an appearance, and, thus, the out-of-state party does not need to obtain local counsel for issuance of the subpoena.²¹ Also significant, UIDDA, unlike UFDA, applies not only to depositions but also to document requests, inspections and other methods for discovery set forth in La. C.C.P. art. 1421.²²

Note, however, that UIDDA's passage in Louisiana does not spell the end of UFDA (La. R.S. 13:3821) or letters rogatory (La. R.S. 3824(B)), both of which are still operative and available to practitioners to compel evidence in Louisiana for an out-of-state action. But, comparatively, UIDDA is certainly the simpler alternative.

Applying UIDDA to Obtain Foreign-State Discovery

Louisiana's adoption of UIDDA does not affect the process for obtaining out-of-state discovery in a Louisiana state-

court action. Rather, it simplifies an out-of-state litigant's pursuit of discovery from a nonparty in Louisiana. Thus, the first step in obtaining foreign discovery for a case pending in Louisiana is simply to determine whether the discovery state has enacted UIDDA. The Uniform Law Commission's website contains an "Enactment Status Map" that displays the 33 states that have enacted UIDDA or a variation thereof, as well as the states in which enactment is pending.²³

If the foreign state has adopted UIDDA, a Louisiana lawyer seeking out-of-state discovery can utilize the foreign state's version of UIDDA to seek out-of-state discovery. The Louisiana Legislature amended La. R.S. 12:3823 in 2014 to inform Louisiana litigants of the potential availability of UIDDA in foreign states. La. R.S. 12:3823 now contains a reference to Article 1435 of the Louisiana Code of Civil Procedure, which permits a Louisiana lawyer (after notice to all parties in the Louisiana proceeding) to compel appearance and testimony in the foreign state by using the foreign state's "compulsory process,"²⁴ *i.e.*, UIDDA. Employing UIDDA for out-of-state discovery is preferable for the same reasons that out-of-state litigants are likely to invoke it in Louisiana: UIDDA eliminates any need for judicial intervention or local counsel and, as a result, is more efficient and less costly. Thus, if the foreign state has adopted UIDDA, a Louisiana litigant should take advantage of that procedure as authorized by La. R.S. 13:3823(A)(4) and La. C.C.P. art. 1435.

If the foreign state has not adopted UIDDA,²⁵ the process for issuing a subpoena usually falls into one of three groups, any of which may ultimately require the Louisiana lawyer to retain local counsel to navigate that foreign state's procedure. First, under UFDA, which many states have adopted, a witness may be compelled to provide testimony for an action pending in a foreign state "in the same manner and by the same process and proceedings as may be employed for the purpose of taking testimony in proceedings pending in the [witness's] state."²⁶ In the second category, some states require a letter rogatory or commission from the forum state before issu-



ing a subpoena to an out-of-state witness. Third, some states, such as Maine, still expressly require the trial-state attorney to hire local counsel and file a miscellaneous action,²⁷ which is likely to be the most expensive and inefficient option.

Developing a Discovery Plan in Louisiana

Consider the following suggestions when developing a discovery plan for a case in Louisiana state court in which out-of-state nonparty discovery is required.

1. Identify the foreign state(s) where nonparty discovery is sought — *i.e.*, the "discovery state(s)" per the terminology used by the Uniform Law Commission.²⁸ The state where an action is pending — Louisiana — is referred to as the "trial state."
2. Visit the Uniform Law Commission's website to determine whether the discovery state has adopted UIDDA.²⁹ If

the discovery state has adopted UIDDA, locate the act as codified in the discovery state and review that statute along with any comments that were adopted. The comments to the model act — adopted by Louisiana and other states — are essentially a step-by-step guide to issuing a subpoena under UIDDA.

3. Obtain a valid subpoena issued from the trial state by completing the form required by the judicial district in which the action is pending and submitting the completed subpoena form to the clerk or judge for issuance. In Louisiana, La. C.C.P. art. 1351 requires that the "clerk or judge of the court wherein the action is pending . . . shall issue subpoenas . . . under the seal of the court."³⁰ Unlike some other jurisdictions, Louisiana attorneys cannot issue a subpoena to a Louisiana witness as an officer of the court. Notably, while UIDDA significantly lessens trial-state counsel's responsibility to closely follow the rules of the discovery state, the statute does not reduce any requirements that trial-state

counsel ensure that a subpoena is validly issued under the rules of the trial state.

4. Determine which form, if any, must accompany a subpoena to be issued in the county of the discovery state where the witness resides. The form may be found on the website for the particular discovery-state court.³¹ The discovery state's form should then be completed with the same information included in the trial-state subpoena.

5. Deliver the executed trial-state subpoena and the unexecuted discovery-state subpoena to the appropriate clerk's office in the discovery state. The clerk of court will then issue the identical subpoena from the discovery state once applicable fees are paid, and will have the subpoena served in accordance with the discovery state's law and any applicable local rules.

If the discovery state has not adopted UIDDA, a discovery plan becomes more complicated. But the process in the non-UIDDA discovery state for issuing a subpoena likely permits one or more of the three methods identified above — *i.e.*, UFDA, letters rogatory/commission, or initiating a miscellaneous action. Understanding at the outset which other processes may be available in the discovery state will at least allow an estimate for obtaining the foreign discovery and whether the cost is worth the anticipated benefit.

The next time interstate discovery is required in a state-court proceeding, be sure to consult UIDDA and, if applicable, take advantage of its efficient and cost-effective procedure for obtaining discovery across state lines.

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FOOTNOTES

1. Uniform Interstate Depositions and Discovery Act (2007), available at: www.uniformlaws.org/shared/docs/interstate%20depositions%20and%20discovery/uidda_final_07.pdf (last visited Jan. 17, 2015).

2. American Bar Association, Pretrial Practice & Discovery, Winter 2012, Vol. 20, No. 2 at 13, available at: www.americanbar.org/content/dam/aba/uncategorized/litigation-pretrial-winter2012-mo.authcheckdam.pdf (last visited Jan. 17, 2015).

3. See *supra* note 1 at 1.

4. See *supra* note 1 at 8.

5. Legislative Fact Sheet, Interstate Depositions and Discovery Act, available at: www.uniformlaws.org/Act.aspx?title=Interstate%20Depositions%20and%20Discovery%20Act (last visited Jan. 17, 2015).

6. Louisiana State Legislature, House Bill 619, available at: www.legis.la.gov/legis/BillInfo.aspx?s=14RS&b=HB619&sbi=y (last visited Jan. 30, 2015). UIDDA was first brought to the Louisiana State Law Institute's attention by Michael H. Rubin, an attorney in the Baton Rouge office of McGlinchey Stafford, P.L.L.C. Arkansas and Illinois are also considering passing UIDDA. See, www.uniformlaws.org/Act.aspx?title=Interstate%20Depositions%20and%20Discovery%20Act.

7. See *supra* note 6.

8. See *supra* note 6.

9. See La. R.S. 13:3825 (2015).

10. See La. R.S. 13:3825 cmt. (c).

11. See La. R.S. 13:3825 cmt. (c).

12. See La. R.S. 13:3825 cmt. (c).

13. See La. R.S. 13:3825 cmt. (c).

14. See La. R.S. 13:3825 cmt. (c).

15. See La. R.S. 13:3825 cmt. (c). The comments also recommend that the attorney include a cover letter expressly stating that the subpoena is being issued pursuant to La. R.S. 13:3825. *Id.*

16. See La. R.S. 13:3825 cmt. (c).

17. See La. R.S. 13:3825 cmt. (c).

18. See La. R.S. 13:3825 cmt. (c).

19. See La. R.S. 13:3825 cmt. (c).

20. La. R.S. 13:3824 (pre-2014 amendment), for example, provided that “[a] court of this state may order” a Louisiana witness to give testimony or provide documents “upon the application of any interested person or in response to a letter rogatory.” That language left a litigant in the dark as to which documents must be contained in such an “application.” Further, that language required a court order, which leaves a lawyer questioning whether to initiate an ancillary proceeding in the appropriate parish or to seek an order through the clerk of court. The 2014 amendment to La. R.S. 13:3824 removes the language requiring an order from a “court.” This statutory ambiguity and inconsistency from parish to parish translates to wasted time and cost.

21. See La. R.S. 13:3825(C)(1). Enforcement proceedings, if necessary, must comply with all applicable Louisiana law and may well require

participation by Louisiana counsel.

22. Compare La. R.S. 13:3825(B)(5) with La. R.S. 13:3821 and La. R.S. 13:3824.

23. Enactment Status Map, Uniform Interstate Depositions and Discovery Act, available at: www.uniformlaws.org/Act.aspx?title=Interstate%20Depositions%20and%20Discovery%20Act (last visited Jan. 17, 2015).

24. La. R.S. 13:3823(A)(2)(d); La. C.C.P. art. 1435.

25. Many states have not adopted UIDDA. See *infra* note 23.

26. See, e.g., La. R.S. 13:3821.

27. Maine R. Civ. P. 30(h).

28. Prefatory Notes, Uniform Interstate Depositions and Discovery Act, available at: www.uniformlaws.org/shared/docs/interstate%20depositions%20and%20discovery/uidda_final_07.pdf (last visited Jan. 15, 2015).

29. See *infra* note 23.

30. La. C.C.P. art. 1351 (2014).

31. For example, the form for Orleans Parish can be found on the court's website at: www.orleanscdc.com/forms/Subpoena.pdf.

Christopher D. Cazenave is an associate in the Business and Commercial Litigation Practice Group in the New Orleans office of Jones Walker, L.L.P. He received a BS degree, summa cum laude, in 2005 from Louisiana State University and his JD degree in 2009 from George Mason University School of Law, where he served as executive editor of the George Mason Law Review. He joined Jones Walker in 2009. He is currently a member of the Louisiana Bar Journal's Editorial Board. (ccazenave@joneswalker.com; Ste. 5100, 201 St. Charles Ave., New Orleans, LA 70170)



Graham H. Ryan is an associate in the Business and Commercial Litigation Practice Group in the New Orleans office of Jones Walker, L.L.P. He received a BS degree, summa cum laude, in finance in 2007 from Louisiana State University and his JD degree and diploma in comparative law in 2011 from LSU Paul M. Hebert Law Center, where he served as online editor of the Louisiana Law Review. (gryan@joneswalker.com; Ste. 5100, 201 St. Charles Ave., New Orleans, LA 70170)

