

## Proposed Amendments to Rule 28

Rule 28 is amended as follows:

### Rule 28. Persons Before Whom Depositions May Be Taken

(a) Within the United States.

(1) **In General.** Within the United States or ~~within a territory or insular possession subject to the~~**United States** jurisdiction ~~of the United States,~~ depositions shall, **a deposition must** be taken before:

(A) an officer authorized to administer oaths ~~by the laws of the United States or of~~ **either by federal law or by the law in** the place where the ~~of~~ examination is held, ~~;~~ or before

(B) a person appointed by the court. ~~A person so appointed has power to administer oaths and take testimony.~~

(2) **Definition of “Officer”.** The term “~~officer as used~~” in Rules 30, 31, and 32 includes a person appointed by the court **under this rule** or designated by the parties under Rule 29(a).

(b) In a Foreign Countries. Depositions Country.

(1) **In General.** **A deposition** may be taken in a foreign country ~~(1)~~ pursuant to any:

(A) **under an** applicable treaty or convention, ~~or (2) pursuant to;~~

(B) **under** a letter of request ~~(, whether or not captioned a “letter rogatory), or (3”;~~

**(C)** on notice, before a person authorized to administer oaths **either by federal law or by the law** in the place where the ~~of~~ examination is held, ~~either by the law thereof; or by the law of the United States, or (4~~

**(D)** before a person commissioned by the court, ~~and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony. A commission or a~~

**(2) Issuing a Letter of Request or a Commission.** A letter of request shall, **a commission, or both may** be issued:

**(A)** on **appropriate terms after an** application and notice ~~and on terms that are just and appropriate. It is not a requisite to the issuance of a commission or a letter of request that the~~ **of it; and**

**(B) without a showing that** taking of the deposition in any other manner is impracticable or inconvenient; ~~and both a commission and a letter of request may be issued in proper cases..~~

**(3) Form of a Request, Notice, or Commission.** **When a letter of request or any other device is used according to a treaty or convention, it must be captioned in the form prescribed by that treaty or convention. A letter of request may be addressed “To the Appropriate Authority in [name of country].” A deposition notice or a commission may must designate by name or descriptive title the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be addressed “To the Appropriate Authority in [here name the country].”** ~~When a letter of request or any~~

~~other device is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention.~~

**(4) Letter of Request--Admitting Evidence.** Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States ~~under these rules.~~

(c) ~~Disqualification for Interest. No. A~~ deposition shall **must not** be taken before a person who is a **any party's** relative ~~or,~~ employee, or attorney ~~or counsel~~ of any of the parties, ~~or is a relative or employee of such;~~ **who is related to or employed by any party's** attorney; or counsel, ~~or~~ **who** is financially interested in the action.

(As amended July 28, 1988, eff. Nov. 1, 1988; Nov. 29, 1995, eff. Mar. 31, 1996; Nov. 14, 1997, eff. Jan. 1, 1998; Aug. 29, 2000, eff. Jan. 1, 2001; \_\_\_\_\_, **2009, eff. \_\_\_\_\_, 2010.**)

#### **Advisory Committee Note**

The language of Rule 28 has been amended as part of the general restyling of these rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.