

Proposed Amendments to Rule 30

Rule 30 is amended as follows:

Rule 30. Depositions ~~Upon~~ **by** Oral Examination

(a) ~~When Depositions~~ **a Deposition** ~~May Be Taken; When Leave Required.~~

(1) ~~A Party may take the testimony of~~ **(1) Without Leave. A party may, by oral questions, depose** any person, including a party, ~~by deposition upon oral examination without leave of court except as provided in paragraph~~ **(Rule 30(a)(2)).** The **deponent's** attendance ~~of witnesses~~ may be compelled by subpoena ~~as provided in~~ **under** Rule 45.

(2) **With Leave.** A party must obtain leave of court, ~~which shall be granted and the court must grant leave~~ to the extent consistent with the principles stated in Rule 26(b)(2), ~~if the person to be examined is confined in prison or if, without the written stipulation of the parties,]:~~

~~(A) a proposed~~ **(A) if the parties have not stipulated to the deposition and:**

(i) the deposition would result in more than ~~ten~~ **10** depositions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by **the** third-party defendants;

~~(B) the person to be examined~~ **(ii) the deponent has** already been deposed in the case; or

~~(C) a~~ **(iii) the** party seeks to take ~~a~~ **the** deposition before the time specified in Rule 26(d), unless the **party certifies in the** notice ~~contains a certification, with supporting facts, that the person to be~~

~~examined~~ **deponent** is expected to leave the United States and be unavailable for examination in this country ~~unless deposed before~~ **after** that time.; **or**

(B) if the deponent is confined in prison.

(b) ~~Notice of Examination: General~~ **the Deposition; Other Formal** Requirements;
~~Method of Recording; Production of Documents and Things; Deposition of Organization;~~
~~Deposition by Telephone.~~

(1) **Notice in General.** A party desiring **who wants** to take the deposition of any **depose a** person upon **by** oral examination shall **questions must** give reasonable **written** notice in writing to every other party to the action. The notice shall **must** state the time and place for taking **of** the deposition and, **if known,** the **the deponent's** name and address of each person to be examined, if known, and, if **. If** the name is not known, **unknown, the notice must provide** a general description sufficient to identify the person or the particular class or group to which the person belongs.

(2) **Producing Documents.** If a subpoena duces tecum is to be served on the person to be examined, the designation of **deponent,** the materials to be produced **designated for production,** as set forth **out** in the subpoena shall be attached to, or included in, the notice, **must be listed in the notice or in an attachment. The notice to a party deponent may be accompanied by a request under Rule 34 to produce documents and tangible things at the deposition.**

(2)3 **Method of Recording.**

(A) Method Stated in the Notice. The party ~~taking~~**who notices** the deposition shall **must** state in the notice the method ~~by which~~**for recording** the testimony ~~shall be recorded~~. Unless the court orders otherwise, it ~~testimony~~ may be recorded by ~~sound, sound and audio,~~ **audio**visual, or stenographic means, ~~and the~~. **The noticing** party taking the deposition shall ~~bear the cost of~~**bears** the recording **costs**. Any party may arrange for ~~a transcription to be made from the recording of~~**transcribe** a deposition ~~taken by non-stenographic means~~.

(3)B) Additional Method. With prior notice to the deponent and other parties, any party may designate another method ~~to record~~**for recording** the deponent's testimony in addition to the method ~~that~~ specified by ~~in the original notice~~. **That party bears** the person taking **expense of** the deposition. ~~The additional record or transcript shall be made at that party's expense unless the court orders otherwise orders.~~

(4) By Remote Means. ~~The parties may stipulate--or the court may on motion order--that a deposition be taken by telephone or other remote means. For the purpose of this rule and Rule 28(a), the deposition takes place where the deponent answers the questions.~~

(5) Officer's Duties.

(A) Before the Deposition. Unless **the parties stipulate** otherwise agreed by the parties, a deposition shall **must** be conducted before an officer appointed or designated under Rule 28 ~~and shall~~. **The officer must**

begin **the deposition** with a ~~statement~~ **an** on ~~the~~ record by the officer **statement** that includes ~~(A):~~

(i) the officer's name and business address; ~~(B)~~

(ii) the date, time, and place of the deposition; ~~(C)~~

(iii) the **deponent's** name ~~of the deponent;~~ ~~(D) the~~ ;

(iv) **the officer's** administration of the oath or affirmation to the deponent; and ~~(E) an identification~~

(v) **the identity** of all persons present.

(B) Conducting the Deposition; Avoiding Distortion. If the deposition is recorded ~~other than~~ **non**-stenographically, the officer shall **must** repeat **the** items (A) through ~~(C)~~ **in Rule 30(b)(5)(A)(i)-(iii)** at the beginning of each unit of recorded tape or other **the** recording medium. The **deponent's and attorneys'** appearance or demeanor of ~~deponents or attorneys~~ shall **must** not be distorted through camera or sound-recording techniques.

(C) After the Deposition. At the end of ~~the~~ **a** deposition, the officer shall **must** state on the record that the deposition is complete and shall **must** set forth **out** any stipulations made by counsel concerning ~~the~~ **the attorneys about** custody of the transcript or recording and **of** the exhibits, or concerning ~~about~~ **any** other pertinent matters.

~~(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible~~

things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

~~(6) A~~ **(6) Notice or Subpoena Directed to an Organization.** In its notice or subpoena, a party may in the party's notice and in a subpoena name as the deponent a public or private corporation ~~or~~, a partnership ~~or~~, **an** association ~~or~~, **a** governmental agency, **or other entity** and **must** describe with reasonable particularity the matters on which **for** examination is requested. In that event, ~~the~~. **The named** organization so named shall **must then** designate one or more officers, directors, or managing agents, or **designate** other persons who consent to testify on its behalf; and **it** may set forth, for each person designated, **out** the matters on which ~~the~~ **each** person **designated** will testify. A subpoena shall **must** advise a non-party organization of its duty to make such ~~a~~ **this** designation. The persons so designated shall **must** testify as to matters **about information** known or reasonably available to the organization. This subdivision ~~(b)~~ **(paragraph (6))** does not preclude taking a deposition by any other procedure authorized ~~in~~ **allowed by** these rules.

~~(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone or other remote electronic means.~~

(c) Examination and Cross-Examination; Record of **the** Examination; ~~Oath;~~

Objections; **Written Questions.**

(1) Examination and Cross-Examination. The examination and cross-examination of witnesses may **a deponent** proceed as permitted at the **they would at** trial under the provisions of the Federal Rules of Evidence, except

~~Rules 103 and 615. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method authorized by subdivision (b)(2) of this rule. All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or to any other aspect of the proceedings shall be noted by the officer upon the record of the deposition; but the examination shall proceed, with the testimony being taken subject to the objections. In lieu~~**After putting the deponent under oath or affirmation, the officer must record the testimony by the method designated under Rule 30(b)(3)(A). The testimony must be recorded by the officer personally or by a person acting in the presence and under the direction of the officer.**

(2) Objections. An objection at the time of the examination--whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition--must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection. An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3).

(3) Participating Through Written Questions. Instead of participating in the oral examination, ~~parties~~ **a party** may serve written questions in a sealed envelope on the party ~~taking the deposition and the party taking the deposition~~ shall transmit **noticing the deposition, who must deliver** them to the officer, who shall propound them to the witness. **The officer must ask the deponent those questions** and record the answers verbatim.

(d) ~~Schedule and Duration; Sanction; Motion to Terminate or Limit Examination.~~

~~(1) Any objection during a deposition must be stated concisely and in a non-argumentative and non-suggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion under Rule 30(d)(4).(2)~~ **(1) Duration.** Unless otherwise authorized by the court or stipulated by the parties **stipulated or ordered by the court**, a deposition is limited to ~~one~~ **1** day of ~~seven~~ **7** hours. The court must allow additional time consistent with Rule 26(b)(2) if needed for a fair examination of **to fairly examine** the deponent or if the deponent ~~or,~~ another person, ~~or~~ **or any** other circumstance, impedes or delays the examination.

~~(3) If the~~ **(2) Sanction. The** court finds that any impediment, delay, or other conduct has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, ~~---~~ including the reasonable costs **expenses** and attorney's fees incurred by any parties ~~as a result~~

~~thereof~~ **party--on a person who impedes, delays, or frustrates the fair examination of the deponent.**

(4)3) Motion to Terminate or Limit.

(A) Grounds. At any time during a deposition, ~~on motion of a party or of the deponent and upon a showing that~~ **or a party may move to terminate or limit it on the examination ground that it** is being conducted in bad faith or in such ~~a~~ **a** manner as ~~that~~ **that** unreasonably ~~to annoy, embarrass, or oppress~~ **annoys, embarrasses, or oppresses** the deponent or party, ~~the court may order the officer conducting the examination to cease forthwith from taking the deposition,.~~ **If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.**

(B) Order. **The court may order that the deposition be terminated** or may limit ~~the~~ **its** scope and manner of ~~the~~ taking of the deposition as provided in Rule 26(c). If **terminated**, the order made ~~terminates the examination, it~~ **deposition** may be resumed thereafter only upon ~~the~~ **by** order of the court. ~~Upon demand of the objecting party or deponent, the taking of the deposition must be suspended for the time necessary to make a motion for an order. The provisions of~~

(C) Award of Expenses. Rule 37(a)(4) ~~apply~~ **applies** to the award of expenses incurred in relation to ~~the~~ motion.

(e) Review by **the** Witness; Changes; Signing.

If requested ~~(1) Review; Statement of Changes. On request~~ by the deponent or a party before completion of the deposition ~~is completed~~, the deponent shall have ~~must be allowed~~ 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and,

(B) if there are changes in form or substance, to sign a statement reciting such ~~listing the~~ changes and the reasons given by the deponent for making them.

(2) Changes Indicated in the Officer's Certificate. The officer shall indicate ~~must note~~ in the certificate prescribed by subdivision ~~(Rule 30(f)(1))~~ whether any ~~a~~ review was requested and, if so, shall append ~~must attach~~ any changes made by the deponent ~~makes~~ during the ~~the 30-day~~ period allowed.

(f) Certification and Delivery by Officer; Exhibits; Copies of the Transcript or Recording; Filing.

(1) Certification and Delivery. The officer must certify ~~in writing~~ that the witness was duly sworn by the officer and that the deposition is a true record of the ~~accurately records the witness's~~ testimony given by the witness. This. ~~The~~ certificate must be in writing and accompany the record of the deposition. Unless ~~the court orders~~ otherwise ordered by the court, the officer must ~~securely~~ seal the deposition in an envelope or package indorsed with ~~bearing~~ the title of the action and marked "Deposition of [here insert ~~witness's~~ name of witness]" and must promptly send it to the attorney who arranged for the transcript or recording,

~~who~~. **The attorney** must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

(2) Documents and Tangible Things.

(A) Originals and Copies. Documents and tangible things produced for inspection during ~~the examination of the witness,~~**a deposition** must, ~~upon the~~**on a party's** request ~~of a party,~~ be marked for identification and ~~annexed~~**attached** to the deposition ~~and may be inspected and copied by any party, except that.~~ **Any party may inspect and copy them. But** if the person producing ~~who produced them~~**wants to keep** the materials ~~desires to retain them~~**originals**, the person may ~~(A:~~

~~(i) offer copies to be marked for identification and annexed,~~
attached to the deposition ~~and to serve thereafter, and then used~~
as originals if the person affords to ~~--~~**after giving** all parties **a** fair opportunity to verify the copies by ~~comparison with the originals, or~~
~~(B) offer~~ **comparing them with** the originals to be marked for identification, ~~after giving to each party an;~~ **or**

(ii) give all parties a fair opportunity to inspect and copy them, ~~the originals after they are marked--~~in which event the materials **originals** may then be used in the same manner as if ~~annexed~~**attached** to the deposition.

(B) Order Regarding the Originals. Any party may move for an order that the original **originals** be ~~annexed~~**attached** to and returned with the deposition ~~to the court,~~ pending final disposition of the case.

~~(2)~~**(3) Copies of the Transcript or Recording.** Unless otherwise **stipulated or** ordered by the court or agreed by the parties, the officer shall **must** retain **the** stenographic notes of any ~~a~~ deposition taken stenographically or a copy of the recording of any deposition taken by another method. ~~Upon payment of~~**When paid** reasonable charges therefor, the officer shall **must** furnish a copy of the transcript or ~~other recording of the deposition to any party or to the deponent.~~

~~(3) The party taking the deposition shall give prompt notice of its filing, or its receipt by such party, to all other parties.~~

(4) Notice of Filing. A party who files the deposition must promptly notify all other parties of the filing.

(g) Failure to Attend **a Deposition** or to Serve **a** Subpoena; Expenses.

~~(1) If the **A** party giving the notice of the taking of **who, expecting** a deposition fails to attend and proceed therewith and another party **to be taken**, attends in person or by **an** attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party **therecover** reasonable expenses incurred by that party and that party's attorney **infor** attending, including reasonable attorney's fees., **if the noticing party failed to:**~~

~~(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable~~

~~expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.~~

(1) attend and proceed with the deposition; or

(2) serve a subpoena on a nonparty deponent, who consequently did not attend.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Nov. 29, 1995, eff. Mar. 31, 1996; Aug. 29, 2000, eff. Jan. 1, 2001; Dec. 18, 2001, eff. Apr. 1, 2002; _____, **2009, eff. _____, 2010.**)

Advisory Committee Note

The language of Rule 30 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.