

Rule 30. Depositions upon oral examination.

(a) When depositions may be taken. – After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under Rule 4(e), except that leave is not required (i) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (ii) if special notice is given as provided in subsection (b)(2) of this rule. The attendance of witnesses may be compelled by subpoena as provided in Rule 45, provided that no subpoena need be served on a deponent who is a party or an officer, director or managing agent of a party, provided the party has been served with notice pursuant to subsection (b)(1) of this rule. The deposition of a person confined in prison or of a patient receiving in-patient care in or confined to an institution or hospital for the mentally ill or mentally handicapped may be taken only by leave of court on such terms as the court prescribes.

(b) Notice of examination; general requirements; place of examination; special notice; nonstenographic recording; production of documents and things; deposition of organization. –

- (1) A party desiring to take the deposition of any person upon oral examination shall give notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice. The notice shall be served on all parties at least 15 days prior to the taking of the deposition when any party required to be served resides without the State and shall be served on all parties at least 10 days prior to the taking of the deposition when all of the parties required to be served reside within the State. Depositions of parties, officers, directors or managing agents of parties or of other persons designated pursuant to subsection (b)(6) hereof to testify on behalf of a party may be taken only at the following places:

A resident of the State may be required to attend for examination by deposition only in the county wherein he resides or is employed or transacts his business in person. A nonresident of the State may be required to attend for such examination only in the county wherein he resides or within 50 miles of the place of service except that a judge, as defined by subdivision (h) of this rule, may, upon motion showing good cause, require that a party who selected the county where the action is pending as the forum for the action or an officer, director or managing agent of such a party, or a person designated pursuant to subsection (b)(6) hereof to testify on behalf of such a party present himself for the taking of his deposition in the county where the action is pending. The judge upon granting the motion may make any other orders allowed by Rule 26(c) with respect thereto, including orders with respect to the expenses of the deponent.

- (2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (i) states that the person to be examined is about to go out of the county where the action is pending and more than 100 miles from the place of trial, or is about to go out of the United States, or is bound on a voyage to sea, and will be unavailable for examination unless his deposition is taken

before expiration of the 30-day period, and (ii) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11 are applicable to the certification.

If a party shows that when he was served with notice under this subsection (b)(2) he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.

- (3) The court may for cause shown enlarge or shorten the time for taking the deposition.
- (4) Unless the court orders otherwise, testimony at a deposition may be recorded by sound recording, sound-and-visual, or stenographic means. If the testimony is to be taken by other means in addition to or in lieu of stenographic means, the notice shall state the methods by which it shall be taken and shall state whether a stenographer will be present at the deposition. In the case of a deposition taken by stenographic means, the party that provides for the stenographer shall provide for the transcribing of the testimony taken. If the deposition is by sound recording only, the party noticing the deposition shall provide for the transcribing of the testimony taken. If the deposition is by sound-and-visual means, the appearance or demeanor of deponents or attorneys shall not be distorted through camera techniques. Regardless of the method stated in the notice, any party or the deponent may have the testimony recorded by stenographic means.
- (5) A party deponent, deponents who are officers, directors or managing agents of parties and other persons designated pursuant to subsection (b)(6) hereof to testify on behalf of a party may not be served with a subpoena duces tecum, but the notice to a party for the deposition of such a 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, except as to time for response, shall apply to the request. When a notice to take such a deposition is accompanied by a request made in compliance with Rule 34 the notice and the request must be served at least 15 days earlier than would otherwise be required by Rule 30(b)(1), and any objections to such a request must be served at least seven days prior to the taking of the deposition.
- (6) A party may in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. It shall not be necessary to serve a subpoena on an organization which is a party, but the notice, served on a party without an accompanying subpoena shall clearly advise such of its duty to make the required designation. The persons so designated shall testify as to matters known or reasonably

available to the organization. This subsection (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

- (7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone. For the purposes of this rule and Rules 28(a), 37(a)(1) and 45(d), a deposition taken by telephone is taken in the district and the place where the deponent is to answer questions propounded to him.

(c) Examination and cross-examination; record of examination; oath; objections. – Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Rule 43(b). The person before whom the deposition is to be taken shall put the deponent on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the deponent. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subsection (b)(4) of this rule. If requested by one of the parties, the testimony shall be transcribed.

All objections made at the time of the examination to the qualifications of the person before whom the deposition is taken, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted upon the deposition by the person before whom the deposition is taken. Subject to any limitations imposed by orders entered pursuant to Rule 26(c) or 30(d), evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party who served the notice of taking the deposition, and he shall transmit them to the person before whom the deposition is to be taken who shall open them at the deposition, propound them to the witness and record the answers verbatim.

(d) Motion to terminate or limit examination. – At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, a judge of the court in which the action is pending or any judge in the county where the deposition is being taken may order before whom the examination is being taken to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of a judge of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Submission to deponent; changes; signing. – The sound-and-visual recording, or the transcript of it, if any, the transcript of the sound recording, or the transcript of a deposition taken by stenographic means, shall be submitted to the deponent for examination and shall be reviewed by the deponent, unless such examination and review are waived by the deponent and by the parties. If there are changes in form or substance, the deponent shall sign a statement reciting such changes and the reasons given by the deponent for making them. The person administering the oath shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent. The certificate shall then be signed by the deponent, unless the parties by stipulation waive the signing or the deponent is ill or cannot be found or refuses to sign. If the certificate is not signed by the deponent within 30 days of its submission to him, the person before whom the deposition was taken shall sign the certificate and state on the certificate the fact of the waiver or of the illness or absence of the deponent or the fact of the refusal or failure to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though

the certificate were signed unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) Certification by person administering the oath; exhibits; copies. –

- (1) The person administering the oath shall certify that the deponent was duly sworn by him and that the deposition is a true record of the testimony given by the deponent. This certificate shall be in writing and accompany the sound-and-visual or sound recording or transcript of the deposition. He shall then place the deposition in an envelope or package endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall personally deliver it or mail it by first class mail to the party taking the deposition or his attorney who shall preserve it as the court's copy.

Documents and things produced for inspection during the examination of the deponent shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (i) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (ii) if the person producing the materials requests their return, the person before whom the deposition is taken shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

- (2) Upon payment of reasonable charges therefor, the person administering the oath shall furnish a copy of the deposition to any party or to the deponent.
- (3) Repealed by Session Laws 2005-138, s. 3, effective October 1, 2005.

(g) Failure to attend or to serve subpoena; expenses. –

- (1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the judge may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.
- (2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the judge may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(h) Judge; definition. –

- (1) In respect to actions in the superior court, a judge of the court in which the action is pending shall, for the purposes of this rule, and Rule 26, Rule 31, Rule 33, Rule 34, Rule 35, Rule 36 and Rule 37, be a superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or G.S. 7A-48 in that county.
- (2) In respect to actions in the district court, a judge of the court in which the action is pending shall, for the purposes of this rule, Rule 26, Rule 31, Rule

33, Rule 34, Rule 35, Rule 36 and Rule 37, be the chief district judge or any judge designated by him pursuant to G.S. 7A-192.

- (3) In respect to actions in either the superior court or the district court, a judge of the court in the county where the deposition is being taken shall, for the purposes of this rule, be a superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or G.S. 7A-48 in that county, or the chief judge of the district court or any judge designated by him pursuant to G.S. 7A-192. (1967, c. 954, s. 1; 1973, c. 828, s. 1; c. 1126, ss. 1, 2; 1975, c. 762, s. 2; 1977, c. 769; 1983, c. 201, s. 2; c. 801, ss. 1, 2; 1987 (Reg. Sess., 1988), c. 1037, s. 42; 1995, c. 353, ss. 1-3; 1995 (Reg. Sess., 1996), c. 742, s. 4; 2005-138, s. 3.)