

Rule 28. Persons Before Whom Depositions May be Taken**28.01 Within the United States**

Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. The term "officer" as used in Rules 28, 30, 31, and 32 includes a person appointed by the court or designated by the parties pursuant to Rule 29. A person so appointed has power to administer oaths and take testimony.

28.02 In Foreign Countries

Depositions may be taken in a foreign country (1) pursuant to any applicable treaty or convention, or (2) pursuant to a letter of request (whether or not captioned a letter rogatory), or (3) on notice before a person authorized to administer oaths in the place where the examination is held, either by the law thereof or by the law of the United States, or (4) 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 letter of request shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter of request that the 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. A notice or commission may designate 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. 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.

(Amended effective January 1, 1997.)

Advisory Committee Comment - 1996 Amendment

This change conforms the rule to its federal counterpart. The committee believes it is especially desirable to have this rule identical to the federal rule because of its subject matter. In addition to the usual factors favoring uniformity, this is a provision governed largely by federal law and which may need to be understood and applied by court reporters, consular or embassy officials, and other non-lawyers. Conformity to the federal rule increases the prospects that the rule will be followed and will not impose significant additional burdens on the litigants.

28.03 Disqualification for Interest

No deposition shall be taken before or reported by any person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action, or who has a contract with the party, attorney, or person with an interest in the action that affects or has a substantial tendency to affect impartiality.