

Rule 32. Use of Depositions in Court Proceedings**32.01 Use of Depositions**

At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the Minnesota Rules of Evidence applied as though the witness were then present and testifying, and subject to the provisions of Rule 32.02, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof in accordance with any one of the following provisions:

(a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness or for any purpose permitted by the Minnesota Rules of Evidence.

(b) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, employee, or managing agent or a person designated pursuant to Rules 30.02(f) or 31.01 to testify on behalf of a public or private corporation, partnership, association, or governmental agency which is a party may be used by an adverse party for any purpose.

(c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

(1) that the witness is dead; or

(2) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or

(4) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(5) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witness orally in open court, to allow the deposition to be used.

(d) If only part of a deposition is offered in evidence by a party, an adverse party may require the offering party to introduce any other part which ought in fairness to be considered with the part introduced and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action has been brought in any court of the United States or any state and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the Minnesota Rules of Evidence.

32.02 Objections to Admissibility

Subject to the provisions of Rules 28.02 and 32.04(c), objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of evidence if the witness were then present and testifying.

32.03 Form of Presentation

Except as otherwise directed by the court, a party offering deposition testimony pursuant to this rule may offer it in stenographic or nonstenographic form, but, if in nonstenographic form, the party shall also provide the court with a transcript of the portions so offered. On request of any party in a case tried before a jury, deposition testimony offered other than for impeachment purposes shall be presented in nonstenographic form, if available, unless the court for good cause orders otherwise.

(Amended effective January 1, 1997.)

Advisory Committee Comment - 1996 Amendment

This change conforms the rule to its federal counterpart. As is true for the amendments to Rules 30 and 31, the committee believes it is advantageous to have great uniformity in practice in the area of deposition practice because of the likelihood that some of the players in many depositions are totally unfamiliar with Minnesota Procedure.

32.04 Effect of Errors and Irregularities in Depositions

(a) As to Notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(b) As to Disqualification of Officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c) As to Taking of Deposition.

(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(3) Objections to the form of written questions submitted pursuant to Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 7 days after service of the last questions authorized.

(d) As to Completion and Return of Deposition. Errors and irregularities in the manner in which the testimony is transcribed, preserved or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer pursuant to Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(Amended effective January 1, 2020.)

Advisory Committee Comment - 2019 Amendments

Rule 32.04(c)(3) is amended as part of the extensive amendments made to the timing provisions of the rules. These amendments implement the adoption of a standard "day" for counting deadlines under the rules - counting all days regardless of the length of the period and standardizing the time

periods, where practicable, to a 7-, 14-, 21- or 28-day schedule. The only change to this rule lengthens the 5-day deadline for objections to the form of written questions to 7 days. This change affects only the time limit, and is not intended to have any other effect, and because weekend days and holidays are now included in the counting of days, the old 5-day period will most often be the same as the new 7-day period.

32.05 Use of Video Depositions

Video depositions may be used in court proceedings to the same extent as stenographically recorded depositions.

(Amended effective July 1, 2015.)