

Rule 30. Depositions Upon Oral Examination**30.01 When Depositions May Be Taken**

After service of the summons, 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 pursuant to Rule 4.04, except that leave is not required if a defendant has served a notice of taking deposition or otherwise sought discovery. The attendance of witnesses may be compelled by subpoena as provided in Rule 45.

(Amended effective July 1, 2007.)

Advisory Committee Comment - 2007 Amendment

Rule 30.01 is amended only to delete a reference to a notice procedure in former Rule 30.02(b), which was abrogated in 1996. The amendment merely conforms the rule to the current procedure.

30.02 Notice of Examination; General Requirements; Special Notice; Non-Stenographic Method of Recording; Production of Documents and Things; Deposition of Organization; Depositions by Telephone

(a) Notice. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the name 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 the person or the particular class or group to which the person 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.

(b) Notice of Method of Recording. The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the court orders otherwise, it may be recorded by sound, sound-and-visual, or stenographic means, the party taking the deposition shall bear the cost of the recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by non-stenographic means.

(c) Additional Recording Method. With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the method specified by the person taking the deposition. The additional record or transcript shall be made at that party's expense unless the court otherwise orders.

Any deposition pursuant to these rules may be taken by means of simultaneous audio and visual electronic recording without leave of court or stipulation of the parties if the deposition is taken in accordance with the provisions of this rule.

In addition to the specific provisions of this rule, the taking of video depositions is governed by all other rules governing the taking of depositions unless the nature of the video deposition makes compliance impossible or unnecessary.

(d) Role of Officer. Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes (A) the officer's name and business address; (B) the date, time, and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

(e) Production of Documents. 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.

(f) Deposition of Organization. A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership, 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 the person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This provision does not preclude taking a deposition by any other procedure authorized in these rules.

(g) Telephonic Depositions. 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. For the purposes of this rule and Rules 28.01, 37.01(a), 37.02(a) and 45.03, a deposition taken by such means is taken in the district and at the place where the deponent is to answer questions.

(Amended effective March 1, 1994; amended effective January 1, 1997; amended effective January 1, 2006.)

Advisory Committee Comment - 1993 Amendment

Rule 30.02(d)(1) is amended to change slightly the arrangements for handling the videotape record of a deposition taken by that means. At the present time the rule requires the videotape operator to retain possession of the videotape, a circumstance which sometimes makes it difficult to procure the videotape for use at a trial which takes place long after the deposition was taken. The amendment directs the lawyer for the party taking the deposition to retain custody of the video recording after it has been sealed and marked for identification purposes. This procedure is consistent with the procedure for handling original typewritten deposition transcripts pursuant to Minn. R. Civ. P. 30.06(a).

When the Advisory Committee recommended the addition of Rule 30.02(h) in 1988, the members of the committee hoped that it would be a useful device for curbing discovery abuses, but it appears that the rule is almost never used. The deletion of this portion of the rule should not be taken as any support for expanded discovery. The authority to control discovery is amply set forth in other rules, see, e.g., Minn. Gen. R. Prac. 111 & 112, and the committee encourages the continued vigorous exercise of this authority for the protection of all litigants and to carry out the mandate of Minn. R. Civ. P. 1, which provides that the Rules of Civil Procedure "shall be construed to secure the just, speedy, and inexpensive determination of every action."

Advisory Committee Comment - 2006 Amendment

Rule 30.02 is amended only to add subsection titles. This change is made for convenience and consistency with the style of other rules, and is not intended to affect the rule's interpretation. Rule 30.02(g) is amended to renumber one of the rule cross-references to reflect the amendment and renumbering of Rule 45 as part of the amendments effective January 1, 2006.

30.03 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 the Minnesota 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 means ordered in accordance with Rule 30.02(d). 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 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 deposition; but the examination shall proceed, with the testimony being taken subject to the objections. In lieu of participating in the oral

examination, a party may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(Amended effective January 1, 1997.)

30.04 Schedule and Duration; Motion to Terminate or Limit Examination

(a) Objections. Any objection to evidence during a deposition shall 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 paragraph (d).

(b) Duration. Unless otherwise authorized by the court or stipulated by the parties, a deposition is limited to one day of seven hours. The court must allow additional time consistent with Rule 26.02(a) if needed for a fair examination of the deponent or if the deponent or another person, or other circumstance, impedes or delays the examination.

(c) Sanctions. If the court finds such an impediment, delay, or other conduct that has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any parties as a result thereof.

(d) Suspension of Examination. At any time during a 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, the court in which the action is pending or the court in the district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26.03. If the order made terminates the examination, it shall be resumed thereafter only upon the order 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 37.01(d) apply to the award of expenses incurred in relation to the motion.

(Amended effective January 1, 1997; amended effective January 1, 2006; amended effective February 29, 2008.)

Advisory Committee Comment - 2006 Amendment

Rule 30.04(a) is amended to remove an ambiguity in the current rule. As amended, the rule expressly extends the prohibition against improper instruction of a deponent not to answer to all persons (including counsel for a non-party witness), instead of just "parties."

Rule 30.04(b) is amended to adopt a specific time limit on depositions. Although parties may agree to a longer deposition and the court can determine that longer examination is appropriate, a deposition is made subject to a limit of one day lasting seven hours. This amendment is identical to the change in Fed. R. Civ. P. 30(d)(2) made in 2000. The purpose of this amendment is to decrease the burden of discovery on witnesses and to encourage focused examination of all deponents. Where the examining party engages in proper and focused examination and encounters unhelpful responses or inappropriate objections, or where the issues in the case dictate that additional time is necessary to permit a fair examination, the court is required to provide it. The rule establishes a presumptive limit on the length of depositions, not the presumptive length. Most depositions will continue to be much shorter than seven hours, and the rule does not limit courts from establishing shorter time limits in particular cases.

30.05 Review by Witness; Changes; Signing

If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate

prescribed by Rule 30.06(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

(Amended effective January 1, 1997.)

30.06 Certification and Filing by Officer; Exhibits; Copies; Notices of Filing

(a) Certification by Officer; Exhibits. The officer shall certify that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness, and shall certify that the deposition has been transcribed, that the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies. This certificate shall be in writing and accompany the record of the deposition. Unless otherwise ordered by the court or agreed to by the parties the officer shall securely seal the deposition in an envelope or package endorsed with the title of the action and marked "Deposition of (herein insert the name of witness)," and shall promptly send it to the attorney or party who arranged for the transcript or recording, who shall store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party, except that if the person producing the materials desires to retain them, the person may (1) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (2) offer the originals to be marked for identification after giving each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition pending final disposition of the case.

(b) Duties of Officer. Unless otherwise ordered by the court or agreed by the parties, the officer shall retain stenographic notes of any deposition taken stenographically or a copy of the recording of any deposition taken by another method. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

(c) Notice of Receipt of Transcript. The party taking the deposition shall give prompt notice of its receipt from the officer to all other parties.

(Amended effective January 1, 1997; amended effective January 1, 2006.)

Advisory Committee Comment - 1996 Amendment

These amendments substantially conform the rule to its federal counterpart. The committee believes it is particularly desirable to have the rules governing the mechanics of taking depositions conform to the federal rules because many depositions are taken for use in parallel state and federal proceedings or in distant locations before reporters who can be expected to know the federal procedures but may not know idiosyncratic Minnesota rules.

*Rule 30.04 is largely new and includes important provisions governing the conduct of depositions. Most important is Rule 30.04(a), which is intended to constrain the conduct of attorneys at depositions. The rule limits deposition objections to concise statements that are directed to the record and not so suggesting a possible answer to the deponent. This rule is intended to set a high standard for conduct of depositions. The problem of deposition misconduct, though probably not as severe as has been noted in some reported cases, is still a frequent and unfortunate part of Minnesota practice. See, e.g., *Hall v. Clifton Precision*, 150 F.R.D. 525 (E.D. Pa. 1993); *Paramount Communications, Inc. v. QVC Network, Inc.*, 637 A.2d 34, 51-57 (Del. 1994); *Kelvey v. Coughlin*, 625 A.2d 775 (R.I. 1993).*

Rule 30.06 is amended to follow its federal counterpart, retaining the existing mechanism for delivering transcripts of depositions to the lawyer or party noticing the deposition rather than filing them with the court. This difference is necessary because Minn. R. Civ. P. 5.04 does not permit filing discovery in the absence of an order.

Advisory Committee Comment - 2006 Amendment

Rule 30.06 is amended only to add subsection titles. This change is made for convenience and consistency with the style of other rules, and is not intended to affect the rule's interpretation.

30.07 Failure to Attend or to Serve Subpoena; Expenses

(a) Failure of Party Noticing Deposition to Attend. 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 court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by the other party and the other party's attorney in so attending, including reasonable attorney fees.

(b) Failure to Serve Subpoena on Non-Party Witness. If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon that witness, and the witness because of such failure does not attend, and if another party attends in person or by attorney on the expectation that the deposition of that witness is to be taken, the court may order the party giving notice to pay to such other party the amount of the reasonable expenses incurred by those individuals in so attending, including reasonable attorney fees.

(Amended effective January 1, 2006.)

Advisory Committee Comment - 2006 Amendment

Rule 30.07 is amended only to add subsection titles. This change is made for convenience and consistency with the style of other rules, and is not intended to affect the rule's interpretation.