

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

(a) 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 rules of evidence applied as though the witness were then present and testifying, 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 of the following provisions:

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

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under SCR-Dom Rel 30(b)(5) or 31(a) to testify on behalf of a corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Court finds: (A) That the witness is dead; or (B) that the witness is at a greater distance than 25 miles from the place of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) 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 witnesses orally in open court, to allow the deposition to be used. A deposition taken without leave of court pursuant to a notice under SCR-Dom Rel 30(b)(2) shall not be used against a party who demonstrates that, when served with the notice, the party was unable through the exercise of diligence to obtain representation of counsel at the taking of the deposition.

(4) A videotape deposition of an expert witness may be used for any purpose, unless otherwise ordered by the Court for good cause shown, even though the witness is available to testify, if the notice of that deposition specified that it was to be taken for use at trial.

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

(6) Substitution of parties pursuant to SCR-Dom Rel 25 does not affect the right to use depositions previously taken. When an action has been brought in this Court or in any court of the United States or of 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 in the original action may be used in the subsequent action as if originally taken therefor.

(b) Objections to admissibility. Subject to the provisions of SCR-Dom Rel 28(b) and subparagraph (d)(3) of this Rule, 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 the evidence if the witness were then present and testifying.

(c) Effect of taking or using depositions. A party does not make a person the party's own witness for any purpose by taking the person's deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the

deposition, but this shall not apply to the use by an adverse party of a deposition under subparagraph (a)(2) of this Rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by that party or by any other party.

(d) Effect of errors and irregularities in depositions.

(1) 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.

(2) 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.

(3) As to taking of deposition.

(A) 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.

(B) 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 objection is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under SCR-Dom Rel 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 five days after service of the last questions authorized.

(4) As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, or otherwise dealt with by the officer under SCR-Dom Rel 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.

(e) 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.