

RULE 12.310. 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 petitioner seeks to take a deposition within 30 days after service of the process and initial pleading on any respondent, except that leave is not required (1) if a respondent has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision (b)(2). The attendance of witnesses may be compelled by subpoena as provided in rule 12.410. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(b) Notice; Method of Taking; Production at Deposition.

(1) A party desiring to take the deposition of any person upon oral examination must give reasonable notice in writing to every other party to the action. The notice must 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 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 under the subpoena must be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by petitioner if the notice states that the person to be examined is about to go out of the state and will be unavailable for examination unless a deposition is taken before expiration of the 30-day period under subdivision (a). If a party shows that when served with notice under this subdivision that party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition, the deposition may not be used against that party.

(3) For cause shown the court may enlarge or shorten the time for taking the deposition.

(4) Any deposition may be audiovisually recorded ~~by videotape~~ without leave of the court or stipulation of the parties, provided the deposition is taken in accordance with this subdivision.

(A) Notice. A party intending to ~~videotape~~ audiovisually record a deposition must state in the notice that the deposition is to be

~~videotaped~~audiovisually recorded and must give the name and address of the operator. Any subpoena served on the person to be examined must state the method or methods for recording the testimony.

(B) ~~Court Reporter~~Recording. ~~Videotaped~~Audiovisual depositions must ~~also be stenographically recorded by a certified court reporter,~~ unless all parties agree otherwise in case transcription is necessary.

(C) Procedure. At the beginning of the deposition, the officer before whom it is taken must, on camera: (i) identify the style of the action, (ii) state the date, and (iii) swear in the witness.

(D) Custody of ~~Tape~~Recording and Copies. The attorney for the party requesting the ~~videotaping~~audiovisual recording of the deposition must take custody of and be responsible for the safeguarding of the ~~videotape~~audiovisual recording, must permit the viewing of it by the opposing party, and, if requested, must provide a copy of the ~~videotape~~audiovisual recording at the expense of the party requesting the copy.

(E) Cost of ~~Videotaped~~Audiovisually Recorded Depositions. The party requesting the ~~videotaping~~audiovisual recording bears the initial cost of ~~videotaping~~recording.

(5) The notice to a party deponent may be accompanied by a request made in compliance with rule 12.350 for the production of documents and tangible things at the taking of the deposition. The procedure of rule 12.350 applies to the request. Rule 12.351 provides the exclusive procedure for obtaining documents or things by subpoena from nonparties without deposing the custodian or other person in possession of the documents.

(6) In the notice a party may name as the deponent a public or private corporation, a partnership or association, or a governmental agency, and designate with reasonable particularity the matters on which examination is requested. The organization so named must designate one or more officers, directors, or managing agents, or other persons who consent to do so, to testify on its behalf and may state the matters on which each person designated will testify. The persons so designated must testify about matters known or reasonably available to the organization. This subdivision does not preclude taking a deposition by any other procedure authorized in these rules.

(7) If not otherwise agreed by the parties, On motion the court may order that the testimony at a deposition be taken by telephone or comparable audio communication equipment, or by video conference or comparable audiovisual communication equipment. The order may prescribe the manner in which the deposition will be taken. The cost for the use of such communication equipment is the responsibility of the requesting party unless otherwise agreed by the parties or ordered by the court. A party may also arrange for a stenographic transcription at that party's own initial expense.

(8) Any minor subpoenaed for testimony has the right to be accompanied by a parent, guardian, guardian ad litem, or attorney ad litem at all times during the taking of testimony notwithstanding the invocation of the rule of sequestration of section 90.616, Florida Statutes, except on a showing that the presence of a parent or guardian is likely to have a material, negative impact on the credibility or accuracy of the minor's testimony, or that the interests of the parent or guardian are in actual or potential conflict with the interests of the minor. The provisions of this subdivision do not alter the requirements of rule 12.407 that a court order must be obtained before a minor child may be deposed or brought to a deposition.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial. The officer before whom the deposition is to be taken must put the witness on oath and must personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness, except that when a deposition is being taken by telephone or comparable audio communication equipment, the witness must be sworn by a person physically present with the witness who is qualified to administer an oath in that location. If deposition testimony is being taken via video conference or comparable audiovisual communication equipment, and the parties agree, the witness may also be sworn remotely using such video conference or comparable audiovisual communication equipment by a person who is qualified to administer oaths in the witness's jurisdiction and who administers the oath consistent with the laws of the jurisdiction where the witness is located. The testimony must be ~~taken stenographically or~~ recorded by any other means ordered in accordance with subdivision (b)(4). If requested by one of the parties, the testimony must be transcribed at the initial cost of the requesting party and prompt notice of the request must be given to all other parties. All objections made at the time of the examination to the qualifications of the officer taking the deposition, the manner of taking it, the evidence presented, or the conduct of any party, and any other

objection to the proceedings must be noted by the officer during the deposition. Any objection during a deposition must be stated concisely and in a nonargumentative and nonsuggestive manner. A party 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 subdivision (d). Otherwise, evidence objected to must be taken subject to the objections. Instead of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and that party must transmit them to the officer, who must 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 on 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, or that objection and instruction to a deponent not to answer are being made in violation of subdivision (c), the court in which the action is pending or the circuit court where the deposition is being taken may order the officer conducting the examination to cease immediately from taking the deposition or may limit the scope and manner of the taking of the deposition under rule 12.280(d). If the order terminates the examination, it shall be resumed thereafter only on the order of the court in which the action is pending. On demand of any party or the deponent, the taking of the deposition must be suspended for the time necessary to make a motion for an order. The provisions of rule 12.380(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Witness Review. If the testimony is transcribed, the transcript must be furnished to the witness for examination and must be read to or by the witness unless the examination and reading are waived by the witness and by the parties. Any changes in form or substance that the witness wants to make must be listed in writing by the officer with a statement of the reasons given by the witness for making the changes. The changes must be attached to the transcript. It must then be signed by the witness unless the parties waived the signing or the witness is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within a reasonable time after it is furnished to the witness, the officer signs the transcript and states on the transcript the waiver, illness, absence of the witness, or refusal to sign with any reasons given. The deposition may then be used as fully as though signed unless the court holds that the reasons given for the refusal to sign require rejection of the deposition wholly or partly, on motion under rule 12.330(d)(4).

(f) Filing; Exhibits.

(1) If the deposition is transcribed, the officer must certify on each copy of the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. Documents and things produced for inspection during the examination of the witness must be marked for identification and annexed to and returned with the deposition on the request of a party, and may be inspected and copied by any party, except that the person producing the materials may substitute copies to be marked for identification if that person affords to all parties fair opportunity to verify the copies by comparison with the originals. If the person producing the materials requests their return, the officer must 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 same manner as if annexed to and returned with the deposition.

(2) On payment of reasonable charges therefor the officer must furnish a copy of the deposition to any party or to the deponent.

(3) A copy of a deposition may be filed only under the following circumstances:

(A) It may be filed in compliance with Florida Rule of Judicial Administration 2.425 and rule 12.280(j) by a party or the witness when the contents of the deposition must be considered by the court on any matter pending before the court. Prompt notice of the filing of the deposition must be given to all parties unless notice is waived. A party filing the deposition must furnish a copy of the deposition or the part being filed to other parties unless the party already has a copy.

(B) If the court determines that a deposition previously taken is necessary for the decision of a matter pending before the court, the court may order that a copy be filed by any party at the initial cost of the party, and the filing party must comply with rules 2.425 and 12.280(j).

(g) Obtaining Copies. A party or witness who does not have a copy of the deposition may obtain it from the officer taking the deposition unless the court orders otherwise. If the deposition is obtained from a person other than the officer, the reasonable cost of reproducing the copies must be paid to the person by the requesting party or witness.

(h) 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 with the deposition 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 the other party the reasonable expenses incurred by the other party and the other party's attorney in attending, including reasonable attorneys' fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena on the witness and the witness because of the failure does not attend and if another party attends in person or by attorney because that other party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to the other party the reasonable expenses incurred by that other party and that other party's attorney in attending, including reasonable attorneys' fees.

Committee Notes

2008 Amendment. The provisions of *Fla. R. Civ. P.* 1.310(b)(8) do not alter the requirements of Rule 12.407 that a court order must be obtained before deposing a minor child.

20 Amendment. When obtaining testimony by video conference or comparable audiovisual equipment, oaths must be administered in conformity with §§ 92.50, et seq., Florida Statutes.

RULE 12.451. TAKING TESTIMONY

(a) Testimony at Hearing or Trial. When testifying at a hearing or trial, a witness must be physically present unless otherwise provided by law or rule of procedure.

(b) Communication Equipment. The court may permit a witness to testify at a hearing or trial by contemporaneous audio or by video conference or comparable audiovisual communication equipment:

_____ (1) by agreement of the parties or;

_____ (2) for good cause shown upon written request of a party upon reasonable notice to all other parties.

_____ The request and notice must contain the substance of the proposed testimony and an estimate of the length of the proposed testimony. In considering sufficient good cause, the court shall weigh and address in its order the reasons stated for testimony by communication equipment against the potential for prejudice to the objecting party.

(c) Required Equipment. Communication equipment as used in this rule means a conference telephone or other electronic device that permits all those appearing or participating to hear and speak to each other simultaneously and permits all conversations of all parties to be audible to all persons present. Contemporaneous video conference or comparable audiovisual communication equipment must make the witness both audible and visible to all participants during the testimony. For testimony by any of the foregoing means, there must be appropriate safeguards for the court to maintain sufficient control over the equipment and the transmission of the testimony, so that the court may stop the communication to accommodate objection or prevent prejudice.

(d) Oath. Testimony may be taken through audio communication equipment only if a notary public or other person authorized to administer oaths in the witness's jurisdiction is physically present with the witness and administers the oath consistent with the laws of that jurisdiction. If testimony is provided at the hearing via video conference or comparable audiovisual communication equipment, and the parties agree, the witness may also be sworn remotely using such video conference or comparable audiovisual communication equipment by a person who is qualified to administer oaths in the witness's jurisdiction and who

administers the oath consistent with the laws of the jurisdiction where the witness is located.

(e) **Burden of Expense.** The cost for the use of the communication equipment is the responsibility of the requesting party unless otherwise agreed by the parties or ordered by the court.

Committee Note

20 Amendment. When obtaining testimony by video conference or comparable audiovisual equipment, oaths must be administered in conformity with §§ 92.50, et seq., Florida Statutes.