

## **Rule 32.1 Videotape Depositions**

(a) **General.** The use at trial of videotape depositions in civil cases is encouraged. Insofar as possible, the technology of videotape equipment should be utilized to enable the jury to obtain the same factual presentation as would be obtainable if the witness were to appear live in the courtroom. Counsel may, if desired, use multiple cameras and be videotaped while interrogating the deponent or appear with the deponent during all or part of the interrogation.

(b) **Guidelines.**

(1) **Objective.** The objective of each videotape deposition shall be to provide a visual and audio record that will, as nearly as possible, approximate the live appearance of the deponent before the trier of fact.

(2) **Deposition Officer.** The officer presiding at a videotape deposition shall be independent of any of the parties or the counsel of any of the parties. The deposition officer shall be a person authorized under the law to administer an oath to the witness. The deposition officer may also be either the stenographer recording the proceeding or the camera person recording the proceeding by videotape.

(3) **The Camera Person or Persons.** Counsel for the party noticing the deposition shall be responsible for providing the camera person or persons to record the deposition by videotape. If such camera person or persons is other than the deposition officer, such person may be anyone selected by the counsel noticing the deposition, including an employee of counsel. It will be the obligation of the counsel seeking the deposition to determine that matters of staging and technique such as the placement of the camera(s) and any microphone(s), lighting, camera angles, and backgrounds, as well as the use of any demonstrations or exhibits do fairly, accurately and objectively reproduce and record the testimony. Any objections as to any of the proceedings in the taking of the deposition shall be accurately recorded and timely interposed so that the opposing counsel, insofar as possible, may take corrective action. The Court shall ultimately rule on all objections and make such orders as the Court deems appropriate for the editing of any videotape deposition to prevent prejudice to any of the parties to the action.

(4) **Use of Date/Time Generator.** There shall be employed at the deposition a date/time generator to create on the videotape a continuous record of the date and time.

(5) **Commencing the Deposition.** The deposition officer shall commence the deposition by stating on the videotape record his or her name and business address; the name and business address of the officer's employer; the date, time, and place; the name of the deponent and the caption of the action; the identity of

the party on whose behalf the deposition is being taken; and the names of all persons present in the deposition room. The deposition officer shall also swear, on the videotape record, that he or she will record the deposition accurately and abide by all provisions of this Rule. The deponent shall be sworn on the videotape record by a person authorized to administer oaths.

(6) Going "Off Camera". The deposition officer shall not stop the videotape recorder after the deposition commences until it concludes, except, however, that any party may request such cessation, which request will be honored unless another party objects. Each time the tape is stopped or started, the deposition officer shall announce the time on the record.

(7) Changing Tapes. If the deposition requires the use of more than one tape, the end of each tape and the beginning of the next shall be announced orally on the videotape record by the deposition officer. In addition, at the beginning of each tape, the deposition officer shall repeat the officer's name and business address, the date, time, and place of the deposition, and the name of the deponent. At the end of the deposition, the deposition officer shall state on the record that the deposition is complete.

(8) Availability of Monitor. There shall be available to counsel throughout the deposition a monitor on which they can view the videotape record as it is being made.

(9) Exhibitions and Demonstrations. A deponent shall be permitted to conduct demonstrations or experiments or reenact physical events during the course of a videotape deposition. Likewise, a party shall be entitled to utilize with the deponent any visual aids or exhibits in such manner as though the witness were appearing live in Court. Counsel may appear with the deponent in the videotape. Any opposing counsel may interpose any objection which he or she deems appropriate to the use of such demonstrations, experiments, or reenactments or visual aids or exhibits, and the Court shall ultimately rule upon such objections and determine whether or not the matter objected to is to be shown to the jury or edited out of the videotape.

(10) Need to Object Timely. Wherever objections are permitted by this Rule, such objections must be timely raised so as to give the opposing party an opportunity to correct the condition which is the subject of the objection.

(11) 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, and 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 nonstenographic means.

(12) Discrepancies Between Videotape and Stenographic Records. In the event of any material discrepancy between the videotape record and the stenographic transcript, the Court shall determine which record shall be submitted to the trier of fact.

(13) Examination and Correction of Deposition Record. If requested by the deponent or a party before completion of the deposition, after the stenographic transcript of the deposition is completed and available for inspection, the deposition officer shall notify the deponent of such availability. The deponent shall be given thirty (30) days from receipt of such notice to review the original videotape and stenographic transcript of the deposition and to request in writing (or on the videotape record if it is still open) any changes or corrections in such records.

(14) Waiver of Execution. Forty-five (45) days after the notice of availability described in subsection (b)(13) is received by all parties, the original of the videotape and stenographic reporting (together with all requests for changes or corrections theretofore received) shall be filed with the Clerk, where it shall have the same force and effect as a duly executed original stenographic transcript of the deponent's testimony. The Clerk shall release the original videotape for viewing only upon order of the Court.

(15) Certification of the Videotape Record. No later than ten (10) days before trial, the deposition officer and any other technician employed at the deposition shall file with the Clerk their sworn statements that the videotape is an accurate and complete record of the deposition and that they have complied with all provisions of this Rule and the Federal Rules of Civil Procedure applicable to a stenographic reporter or the deposition officer. The certification shall indicate whether any review of the record was requested and, if so, shall append any changes made by the deponent during the period allowed. Counsel for a party, however, if in custody of the videotape record, may file the videotape record and prepare the sworn statement and sign it as counsel. The sworn statement called for by this section shall be served upon all of the parties.

(16) Custody of the Tape. The deposition officer shall maintain custody of the original tape until it is filed with the Court. Parties may view the tape while it is in the officer's custody, but only under conditions that make impossible the erasure or alteration of the tape. The parties may agree that counsel for the party noticing the deposition retain custody of the tape in which event it will be the responsibility of such counsel to file the sworn statement called for under subsection (b)(15) of this Rule.

(17) Editing the Tape. If any party desires to offer any portion of the videotape record at trial, such party shall, no later than five (5) days before trial, advise all other parties of the portions of the tape it wishes to offer. Any party who believes that the portion so designated contains objectionable material may,

by motion, seek the Court's ruling on its admissibility in advance of trial. An edited tape, eliminating material found by the Court to be objectionable, shall be prepared at the expense of the party responsible for the original inclusion of that material, unless the parties provide, or the Court orders, another method for the suppression of the objectionable material or allocation of cost. Nothing in this paragraph is intended to supersede the Local Rules concerning premarking of exhibits for trial.

(18) Rulings on Admissibility. The Court, prior to voir dire, shall make rulings as they relate to any videotape deposition filed in accordance with subsection (b)(17) of this Rule, which rulings will include any orders that may require editing of the videotape prior to its being shown to the jury. It will be the responsibility of counsel proffering the videotape deposition to ascertain that the final form of the videotape deposition as shall be shown to the jury conforms to all such rulings. The purpose of such rulings prior to voir dire is to advise the parties prior to voir dire and opening statements so that the parties will know what evidence will be forthcoming from the videotape deposition.

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