

## **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 due 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 Rule 30(b)(6) or 31(a) to testify on behalf of a public or private 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 100 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 a conflicting commitment that could not be broken or scheduled at another time without subjecting the witness or others to legally enforceable sanctions or significant risk of physical detriment; 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.

(4) 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.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action in any court of the United

States or of any State has been dismissed 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.

(b) **Objections to Admissibility.** Subject to the provisions of Rule 28(b) and subdivision (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) **Transcript.** Regardless of the method by which a deposition was recorded or is to be used in court proceedings, a party using a deposition in court proceedings under this rule shall provide to the court an accurate written transcript of the deposition.

(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 seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under 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 5 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, indorsed, transmitted, or otherwise dealt with by the officer under 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.

**Advisory Note  
January 1, 2003**

The amendment adds a new subdivision (c), replacing an abrogated provision on the effect of using depositions. It requires that a party using a deposition in court provide to the court an accurate written transcript of the deposition. If the deposition was recorded only by videotape, the transcript may be prepared from the tape itself. With the increased use of video depositions, a reliable transcript is indispensable to the court's efficient review of the proffered testimony in order to address any issues that may arise regarding use of the deposition.

**Advisory Committee's Notes  
1984**

Rule 32(a)(3) is amended to permit the use of a deposition at trial whenever a witness is unable to attend because of a conflict of substantial seriousness. The rule is intended to avoid the serious problem of continuances and trial delay which now may occur in scheduling the appearance of certain witnesses, such as doctors, who are not saved by the 100-mile distance provision of Rule 32(a)(3)(B) under which a deposition might be used, but nevertheless cannot attend at a scheduled trial date because of some other commitment of overriding necessity. Commitments which could justify the invocation of this provision should be limited to only the most serious circumstances, such as a required appearance under subpoena in another court or surgery that is essential to the health of a

patient. If the court is satisfied that such conditions exist, however, the deposition may be used.

**Advisory Committee's Note  
February 2, 1976**

Rule 32(c) is abrogated because it appears to be no longer necessary in the light of the Evidence Rules.

**Advisory Committee's Note  
October 1, 1970**

Existing Rule 32 becomes subdivision (d) of the rule; the provisions of the new Rules 32(a), (b), and (c) are derived from existing Rules 26(d), (e) and (f).

The Maine Rule keeps the phrase "due notice" in the introductory paragraph of Rule 32(a). The Federal Amendment substitutes the phrase "reasonable notice," but "due notice" is more appropriate in Maine where a seven-day notice is prescribed by Rule 30(b).

Subdivision (a) (4) involves a change in the standard under which a party offering part of a deposition in evidence may be required to introduce additional parts of the deposition. The present standard in Rule 26(d) (4) is "all of it which is relevant to the part introduced." The substituted phrase "any other part which ought in fairness to be considered with the part introduced," suggests a somewhat greater measure of discretion in application. The new standard conforms to Rule 1B07 of the proposed Federal Rules of Evidence. As stated in the Advisory Committee's Note to the March, 1969, Preliminary Draft of those proposed Federal Rules of Evidence, the rule is based upon two considerations: "The first is the misleading impression created by taking matters out of context. The second is the inadequacy of repair work when delayed to a point later in the trial." The fairness test appears to be more specifically directed to those considerations than the existing test of relevancy.

Other changes in Rule 32 are necessitated by changes in other rules and are minor verbal changes made for clarification.

**Reporter's Notes  
December 1, 1959**

This rule is the same as Federal Rule 32 except for increase in the time limit for objections to interrogatories. The policy of this rule is to subordinate minor procedural irregularities to the better over-all administration of justice, but at the same time to prevent the waiver of important objections. Rule 32(c) (1). R.S.1954, Chap. 117, Sec. 18 (repealed in 1959), is closely similar.