

Rule 206. Method of Taking Depositions on Oral Examination

(a) Notice of Examination; Time and Place. A party desiring to take the deposition of any person upon oral examination shall serve notice in writing a reasonable time in advance on the other parties. The notice shall state the time and place for taking the deposition; the name and address of each person to be examined, if known, or, if unknown, information sufficient to identify the deponent; and whether the deposition is for purposes of discovery or for use in evidence.

(1) *Representative Deponent.* A party may in the notice and in a subpoena, if required, name as the deponent a public or private corporation or a partnership or 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 to testify on its behalf, and may set forth, for each person designated, the matters on which that person will testify. The subpoena shall advise a nonparty 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.

(2) *Audio-Visual Recording to be Used.* If a party serving notice of deposition intends to record the deponent's testimony by use of an audio-visual recording device, the notice of deposition must so advise all parties to the deposition. If any other party intends to record the testimony of the witness by use of an audio-visual recording device, notice of that intent must likewise be served upon all other parties a reasonable time in advance. Such notices shall contain the name of the recording-device operator. After notice is given that a deposition will be recorded by an audio-visual recording device, any party may make a motion for relief in the form of a protective order under Rule 201. If a hearing is not held prior to the taking of the deposition, the recording shall be made subject to the court's ruling at a later time.

If the deposition is to be taken pursuant to a subpoena, a copy of the subpoena shall be attached to the notice. On motion of any party upon whom the notice is served, the court, for cause shown, may extend or shorten the time. Unless otherwise agreed by the parties or ordered by the court, depositions shall not be taken on Saturdays, Sundays, or court holidays.

(b) Any Party Entitled to Take Deposition Pursuant to a Notice. When a notice of the taking of a deposition has been served, any party may take a deposition under the notice, in which case the party shall pay the fees and charges payable by the party at whose instance a deposition is taken.

(c) Scope and Manner of Examination and Cross-Examination.

(1) The deponent in a discovery deposition may be examined regarding any matter subject to discovery under these rules. The deponent may be questioned by any party as if under cross-examination.

(2) In an evidence deposition the examination and cross-examination shall be the same as though the deponent were testifying at the trial.

(3) Objections at depositions shall be concise, stating the exact legal nature of the objection.

(d) Duration of Discovery Deposition. No discovery deposition of any party or witness shall exceed three hours regardless of the number of parties involved in the case, except by stipulation of all parties or by order upon showing that good cause warrants a lengthier examination.

(e) Motion to Terminate or Limit Examination. At any time during the taking of the

deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in any manner that unreasonably annoys, embarrasses, or oppresses the deponent or party, the court may order that the examination cease forthwith or may limit the scope and manner of taking the examination as provided by these rules. An examination terminated by the order shall be resumed only upon further order of the court. Upon the demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to present a motion for an order. The court may require any party, attorney or deponent to pay costs or expenses, including reasonable attorney fees, or both, as the court may deem reasonable.

(f) Record of Examination; Oath; Objections. The officer before whom the deposition is to be taken shall put the witness on oath 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, by sound-recording device, by audio-visual recording device, or by any combination of all three. The testimony shall be transcribed at the request of any party. 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, or to the conduct of any person, and any other objection to the proceedings, shall be included in the deposition. Evidence objected to shall be taken subject to the objection. In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written questions to the officer, who shall propound them to the witness and record the answers verbatim.

(g) Video Depositions. Except as otherwise provided in this rule, the rules governing the practice, procedures and use of depositions shall apply to depositions recorded by audio-visual equipment.

(1) Depositions which are to be recorded by audio-visual equipment shall begin by the operator of the equipment stating, on camera, (1) the operator's name and address, (2) the date, time and place of the deposition, (3) the caption of the case, (4) the name of the witness, (5) the party on whose behalf the deposition is being taken, and (6) the party at whose instance the deposition is being recorded on an audio-visual recording device. The officer before whom the deposition is being taken shall state the officer's name and swear the witness on camera. At the conclusion of the deposition the operator shall state on camera that the deposition is concluded. If the deposition requires the use of more than one videotape or other storage medium, the end of each recorded segment and the beginning of each succeeding segment shall be announced on camera by the operator.

(2) The operator shall initially take custody of the audio-visual recording of the deposition and shall run through the recording to determine the exact length of time of the deposition. The operator shall sign an affidavit stating the length of time of the deposition and shall certify that the recording is a true record of the deposition and shall certify that the operator has not edited or otherwise altered the recording. A deposition so certified requires no further proof of authenticity. If requested by any party at the conclusion of the taking of the deposition, the operator shall make a copy of the videotape and deliver it to the party requesting it at the cost of that party.

(3) A recording of a deposition shall be returned to the attorney for the party at whose

instance the deposition was recorded. Said attorney is responsible for the safeguarding of the recording and shall permit the viewing of and shall provide a copy of the recording upon the request and at the cost of any party. A recording of a discovery deposition shall not be filed with the court except by leave of court for good cause shown.

(4) A recording of a deposition for use in evidence shall not be filed with the court as a matter of course. At the time that a recording of a deposition is offered into evidence, it shall be filed with the court in the form and manner specified by local rule.

(5) The party at whose instance the deposition is recorded audio-visually shall pay the charges of the recording operator for attending and shall pay any charges associated with filing the audio-visual recording.

(6) A party has the right to use the video recording of a deposition or any part thereof in lieu of reading from a stenographic transcript of the deposition.

(h) Remote Electronic Means Depositions. Any party may take a deposition by telephone, videoconference, or other remote electronic means by stating in the notice the specific electronic means to be used for the deposition, subject to the right to object. For the purposes of Rule 203, Rule 205, and this rule, such a deposition is deemed taken at the place where the deponent is to answer questions. Except as otherwise provided in this paragraph (h), the rules governing the practice, procedures and use of depositions shall apply to remote electronic means depositions.

(1) The deponent shall be in the presence of the officer administering the oath and recording the deposition, unless otherwise agreed by the parties.

(2) Any exhibits or other demonstrative evidence to be presented to the deponent by any party at the deposition shall be provided to the officer administering the oath and all other parties within a reasonable period of time prior to the deposition.

(3) Nothing in this paragraph (h) shall prohibit any party from being with the deponent during the deposition, at that party's expense; provided, however, that a party attending a deposition shall give written notice of that party's intention to appear at the deposition to all other parties within a reasonable time prior to the deposition.

(4) The party at whose instance the remote electronic means deposition is taken shall pay all costs of the remote electronic means deposition, unless otherwise agreed by the parties.

Amended September 8, 1975, effective October 1, 1975; amended January 5, 1981, effective February 1, 1981; amended July 1, 1985, effective August 1, 1985; amended June 26, 1987, effective August 1, 1987; amended June 1, 1995, effective January 1, 1996; amended October 22, 1999, effective December 1, 1999; [amended February 16, 2011, effective immediately](#); [amended Dec. 29, 2017, eff. Jan. 1, 2018](#); [amended Sept. 26, 2019, eff. Oct. 1, 2019](#).

(Sept. 26, 2019)

Paragraph (g)(6)

When the rules of evidence permit the use of deposition testimony at trial and the deposition has been video recorded, the amendment gives a party the right to show the video recording. The amendment addresses only the form of presentation, not the rules about when the use of deposition testimony is permitted.

(February 16, 2011)

Paragraph (h)

The Committee is of the opinion that the apparent acceptance and utilization of telephonic and other remote electronic means depositions demonstrate that there is no need to require a party to obtain an order on motion to proceed with such depositions absent a written stipulation. Therefore, the Committee recommended the elimination of such a requirement so that the depositions may proceed by notice.

Committee Comments

(Revised October 22, 1999)

Paragraph (a)

Paragraph (a) of this rule is derived from former Rule 19-6(1). The requirement that the notice state the name or title of the person before whom a deposition is to be taken has been eliminated, and the phrase “if the name is not known, a general description” changed to “if unknown, information.” The penultimate sentence is new. “Subpoena,” of course, includes a subpoena *duces tecum*.

In 1985, Rule 206 was amended to allow audio-visual recordation of depositions upon notice, without a requirement that the parties obtain leave of court.

Paragraph (a) was amended in 1985 to bar depositions from being taken on Saturday, Sunday or court holidays, unless otherwise ordered by the court.

Paragraph (a) was amended in 1987 to add paragraph (a)(1) on representative deponents. The procedure is substantially similar to the procedure set forth in Federal Rule of Civil Procedure 30(b). The intent of the rule is to provide a mechanism for obtaining information without representative depositions. Failure to comply with the rules should call for appropriate sanctions.

Supreme Court Rule 203 was amended contemporaneously with the change in 206(a) in 1987. The elimination of the court’s discretion to order depositions “in any other place designated by an order of the court” in old Rule 203 was to protect nonparty witnesses from unwarranted interference with their business and/or personal lives which might otherwise occur when 206(a) is employed.

The amendment to Rule 206(a) is not intended to expand the court's subpoena power in any way. A nonparty, nonresident witness is subject to the court's subpoena power only to the extent authorized by law.

Paragraph (b)

Paragraph (b) is new. It covers the situation in which one party serves a notice to take the discovery and evidence depositions of a deponent and after taking the discovery deposition decides not to take the deposition for evidence. The new provision permits the opposing party to proceed to take the evidence deposition without the necessity of serving a new notice.

Paragraph (c)

Paragraph (c) covers part of the subject matter covered by former Rule 19-4. The provision dealing with general scope of discovery appearing in former Rule 19-4 has been deleted, since that subject is covered in Rule 201(b). The first sentence of paragraph (c) of this rule is simply a cross-reference to that provision. The second sentence effects a change in Illinois practice. Under former Rule 19-4, a party was permitted to question a deponent as if under cross-examination in a discovery deposition only if the witness was hostile. The prevailing practice appeared to be to examine witnesses as if under cross-examination whether or not they were hostile. Therefore, the committee deleted the requirement of hostility to conform the language of the rule to the actual practice. In subparagraph (c)(2) of this rule, the requirement that examination and cross-examination in the taking of an evidence deposition shall be the same as though the deponent were testifying at the trial is retained.

Subparagraph (c)(3) has been added to eliminate speaking objections.

Paragraph (d)

The Committee is of the opinion that the vast majority of all discovery depositions can easily be concluded within three hours. (For further comment on this issue, see committee comments to Rule 218.)

Paragraphs (e) and (f)

Paragraphs (e) and (f) of this rule are derived from former Rules 19-6(3) and (2), respectively, with minor language changes, but no changes in substance.

Paragraph (f) was amended in 1975 to provide for the recording of depositions by audio-visual as well as sound-recording devices.

Paragraph (g)

The precautions built into paragraph (g), "Videotaped Depositions," are intended to insure that strict adherence to accepted procedures found in other States that allow videotaping will avoid any

problems if videotaping of depositions becomes a widespread practice.

Paragraph (h)

The committee is of the opinion that telephonic and other remote electronic means depositions should be allowed by a specific paragraph of Rule 206. It is meant to reduce unnecessary discovery costs. The committee recommends that all other demonstrative evidence to be presented to the deponent be premarked before being provided to the officer administering the oath and the other parties. The parties may agree pursuant to Rule 201(i) to amend or waive any conditions of paragraph (h).