

DEPOSITION GUIDELINES

1. **Cooperation.**

Counsel are expected to cooperate with, and be courteous to, each other and deponents.

2. **Stipulations.**

Unless contrary to or inconsistent with the Federal Rules of Civil Procedure, Rules of Practice for the District of Kansas Rules or an order of the Court, the parties (and, when appropriate, a non-party witness) may stipulate in writing to alter, amend, or modify any practice relating to the noticing or taking of a deposition. Any stipulation extending the discovery deadline shall not operate to delay trial or any hearing or pretrial conference.

3. **Scheduling.**

Absent extraordinary circumstances, counsel shall consult in advance with opposing counsel and proposed deponents in an effort to schedule depositions at mutually convenient times and places. That counsel for a party may be unavailable shall not, however, be grounds for postponing a deposition if another attorney of record for that party is able to attend. Unless leave of court or agreement of counsel is first obtained, at least **five (5)** calendar days' notice of any deposition shall be given.

4. **Attendance.**

(a) **Who may be present.** Unless otherwise ordered under Fed. R. Civ. P. 26(c), depositions may be attended by counsel of record, members and employees of their firms, attorneys specially engaged by a party for purpose of the deposition, the parties or the representative of a party, and counsel for the deponent. While a deponent is being examined about any document designated as confidential pursuant to a protective or confidentiality agreement or order, any persons to whom disclosure is not authorized under the order or agreement shall be excluded from the deposition.

5. **Conduct.**

(a) **Objections.** Objections shall be concise and shall not suggest answers to or otherwise coach the deponent. Argumentative interruptions will not be permitted. The only objections that should be asserted are those involving privilege or work product protection or some matter that may be remedied if presented at the time, such as an objection to the form of the question or the responsiveness of the answer. Other objections shall be avoided unless the deposition is being taken for the express purpose of preserving testimony.

(b) **Directions not to answer.** Counsel shall not direct or request that a deponent not answer a question, unless (1) counsel has objected to the question on the ground that the answer is protected by privilege, work product immunity, or a limitation on evidence directed by the Court; or (2) the direction not to answer is necessary to allow a party or deponent to present a Fed. R. Civ. P. 30(d) motion to the

Court. When privilege or work product immunity is asserted, the witness is nevertheless required to answer questions relevant to the existence, extent, or waiver of the privilege/immunity, such as the date of a communication, who made it, to whom it has been disclosed, and its general subject matter.

(c) **Private consultation.** Private conferences between deponents and their attorneys during the actual taking of the deposition are improper except for the purpose of determining whether a privilege or work product immunity should be asserted. Unless prohibited by the Court for good cause shown, such conferences may be held during normal recesses and adjournments. Any private conference between a deponent and his/her attorney in violation of this guideline may be a proper subject for inquiry by deposing counsel to determine whether there has been any witness-coaching and, if so, what was discussed between the deponent and counsel. In such inquiry, the Court may determine whether, under applicable law, the parties to such a conferences have waived any attorney-client privilege.

6. Documents.

(a) **Production of documents.** Party deponents shall have at least **thirty (30)** days before the scheduled deposition to produce any requested documents. Non-party witnesses subpoenaed to produce numerous documents shall be served at least **twenty (20)** calendar days before the deposition. Depending upon the quantity of documents to be produced, some time may be needed for inspection of the documents before the questioning begins.

(b) **Protective or confidentiality order.** A copy of any protective or confidentiality order or agreement shall be provided to the deponent before the deposition begins if the deponent is to produce, or will be asked about, any documents that are subject to the order or agreement.

(c) **Review of documents.** If the witness is going to be asked to review numerous or lengthy documents, copies of the documents should be sent to the witness sufficiently in advance of the deposition to enable the witness to read them prior to the deposition. If the documents are not provided in advance or if the witness does read them thus prolonging the deposition the court can consider that a reason for extending the time limit on the deposition.

7. Depositions of Witnesses Who Have No Knowledge of the Facts.

An officer, director, or managing agent of a corporation or a governmental official served with a notice of a deposition or subpoena regarding a matter about which such person has no knowledge may submit to the noticing party five (5) days before the deposition an affidavit so stating and identifying a person within the corporation or governmental entity believed to have such knowledge. Notwithstanding such an affidavit, the noticing party may proceed with the deposition, subject to the right of the witness to seek a protective order.

8. Videotaped depositions.

By indicating in its notice of a deposition that it will record the deposition by videotape a party shall be entitled to videotape the deposition, unless a motion for protective order is filed within the time limits provided by D.Kan. Rule 26.2. Videotape depositions shall be subject to the following terms and conditions:

(a) **Stenographic recording.** The videotaped deposition shall be simultaneously recorded stenographically by a qualified court reporter. The court reporter shall administer the oath or affirmation to the deponents on camera. The written transcript by the court reporter shall constitute the official record of the deposition for purposes of Fed. R. Civ. P. 30(e) (submission to witness) and 30(f) (filing, exhibits).

(b) **Cost.** The noticing party shall bear the expense of both the videotaping and the stenographic recording. Any party may at its own expense obtain a copy of the videotape, in addition to the stenographic transcript. Requests for taxation of these costs may be made at the conclusion of the litigation in accordance with applicable law.

(c) **Video Operator.** The operator of the videotape recording equipment shall be subject to the provisions of Fed. R. Civ. P. 28(c). At the beginning of the deposition the operator shall swear or affirm to record the proceedings fairly and accurately.

(d) **Attendance.** Each witness, attorney, and other person attending the deposition shall be identified on camera at the beginning of the deposition. Thereafter, only the deponent (and any demonstrative materials used during the deposition) shall be videotaped.

(e) **Standards.** The deposition shall be conducted in a manner to replicate, to the extent feasible, the presentation of evidence at a trial. Unless physical restrictions dictate otherwise, the deponent shall be seated at a table or in a witness box except when reviewing or presenting demonstrative materials for which a change in position is needed. To the extent practicable, the deposition shall be conducted in a neutral setting, against a solid background, with only such lighting as is required for accurate video recording. Lighting, camera angle, lens setting, and field of view shall be changed only as necessary to accurately record the natural body movements of the deponent or to portray exhibits and materials used during the deposition. Sound levels shall be altered only as necessary to satisfactorily record the voices of counsel and the deponent.

(f) **Interruptions.** The videotape shall run continuously throughout the active conduct of the deposition. Videotape recording shall be suspended during all "off the record" discussions.

(g) **Re-reading.** The re-reading of questions or answers, when needed, shall be done on camera by the stenographic court reporter.

(h) **Index.** The videotape operator shall use a counter on the recording equipment. After completion of the deposition, the operator shall prepare a log, cross-referenced to counter numbers, which

identifies the positions on the tape where examination by different counsel begins and ends, where objections are made and examination resumes, where exhibits are identified, and where any interruption of continuous tape-recording occurs, whether for recesses, "off the record" discussions, mechanical failure or otherwise.

(i) **Preservation.** The party initiating the videotape procedure shall preserve custody of the original videotape in its original condition together with the operator's log index and a certificate of the operator attesting to the accuracy of the tape until further order of the Court.

(j) **Objections.** Requests for pretrial rulings on the admissibility of evidence obtained during a videotaped deposition shall be accompanied by appropriate pages of the written transcript. If the objection involves matters peculiar to the videotaping, a copy of the videotape shall also be provided to the Court.

(k) **Use at trial; editing of tapes.** A party desiring to offer a videotape deposition at trial shall be responsible for having available at trial the appropriate playback equipment and a trained operator. After the parties have designated the portions of a videotape to be used at trial, an edited copy of the tape that has been purged of any unnecessary portions and any portions to which objections have been sustained, shall be prepared by the offering party to facilitate continuous playback. A copy of the edited tape shall be made available to other parties at least **ten (10)** days before it is used. The unedited original of the tape shall also be available at the trial.

9. Immediate presentation for ruling on dispute.

Disputes that arise during the deposition which cannot be resolved by agreement and which, if not immediately resolved, will significantly disrupt the discovery schedule or require a rescheduling of the deposition, may be addressed by oral motion in a telephone conference with the Court, subject to the Court's availability. The court reporter recording the deposition shall record as part of the deposition the presentation of the issue to the Court and the Court's ruling.