IRFLP 430 Depositions Upon Oral Examination

Idaho Rules of Family Law Procedure Rule 430. 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 prior to the expiration of 30 days after service of summons and petition upon any respondent or service made under Rule 204.G and H [1], 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 C of this rule. The attendance of witnesses may be compelled by subpoena as provided in Rule 711.A - L [2]. The deposition of a person confined in prison may be taken only by leave of a court on such terms as the court prescribes.

B. Notice of examination. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall 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 as set forth in the subpoena shall be attached to or included in the notice.

C. General requirements. Leave of court is not required for the taking of a deposition by petitioner if the notice (1) states that the person to be examined is about to go out of the district where the action is pending and more than 100 miles from the place of trial, or is about to go out from the United States, or is bound on a voyage to sea, and will be unavailable for examination unless the person's deposition is taken before expiration of the 30-day period, and (2) sets forth facts to support the statement. The petitioner's attorney shall sign the notice, and the attorney's signature constitutes a certification that to the best of the attorney's knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 211 [3] are applicable to the certification.

D. Special notice. The court may for cause shown enlarge or shorten the time for taking the deposition.

E. Audio-visual deposition.

1. Recording. Any deposition may be recorded by audio-visual means but simultaneously shall be recorded as a stenographic record. Any party may make at the party's own expense a simultaneous stenographic or audio record of the deposition. Upon a party's request and at the party's own expense, any party is entitled to an audio or audio-visual copy of the audio-visual recording.

2. Official Record. The audio-visual recording is an official record of the deposition. A transcript prepared by a reporter is also an official record of the deposition.

3. Transcript. On motion the court, for good cause, may order the party taking, or who took, a deposition by audio-visual recording to furnish, at the party's expense, a transcript of the deposition.

4. Use. An audio-visual deposition may be used for any purpose and under any circumstances in which a stenographic deposition may be used.

5. Notice. The notice for taking an audio-visual deposition and the subpoena for attendance at that deposition must state that the deposition will be recorded by audio-visual means.

6. Procedure. The following procedure must be observed in recording an audio-visual deposition:

a. Opening of Deposition. The deposition must begin with an oral or written statement on camera which includes:

i. the operator's name and business address;

ii. the name and business address of the operator's employer;

iii. the date, time, and place of the deposition;

iv. the caption of the case;

v. the name of the witness;

vi. the party on whose behalf the deposition is being taken; and

vii. any stipulations by the parties.

b. Counsel. Counsel shall identify themselves on camera.

c. Oath. The oath must be administered to the witness on camera.

d. Multiple Units. If the length of a deposition requires the use of more than one recording unit, the

end of each unit and the beginning of each succeeding unit must be announced on camera.

e. Closing of Deposition. At the conclusion of a deposition, a statement must be made on camera that the deposition is concluded. A statement may be made on camera setting forth any stipulations made by counsel concerning the custody of the audio-visual recording and exhibits or other pertinent matters.

f. Index. Depositions must be indexed by a time generator or other method specified by rule.

g. Objections. An objection must be made as in the case of stenographic depositions.

h. Editing. If the court issues an editing order, the original audio-visual recording must not be altered.

i. Filing. Unless otherwise ordered by court, the original audio-visual recording of a deposition, any copy edited pursuant to an order of the court, and exhibits shall be held and preserved by the attorney who noticed the deposition, in the same manner as a transcript of a deposition as provided by Rule 432 [4].

7. Costs. The reasonable expense of recording, editing, and using an audio-visual deposition may be taxed as costs.

F. Production of documents and things. The notice to a party deponent may be accompanied by a request made in compliance with Rule 416 [5] for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 416 [5] shall apply to the request.

G. Deposition of organization. A party may in the party's notice and in a subpoena 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 who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A 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. This rule does not preclude taking a deposition by any other procedure authorized in these rules.

H. Depositions by conference telephone calls. The parties may stipulate in writing or the court may upon motion order that a deposition may be taken by telephone. For purposes of this rule and rules 424 [6], 429.A [7], 443 [8], and 444 [9], a deposition taken by telephone is taken in the state, territory or insular possession and at the place where the deponent is to answer questions propounded to the deponent.

I. Examination and cross-examination - record of examination - oath - objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Rule 612 [10] and the Idaho Rules of Evidence [11]. 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 or recorded by any other means ordered in accordance with subdivision E of this rule. If requested by one (1) of the parties, the testimony shall be transcribed at the party's own expense.

All objections made at time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition who shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

J. Conduct during depositions; motions to terminate or limit examination.

1. Any objection to evidence during a deposition shall be stated concisely and in a non-argumentative and non-suggestive manner. Conduct of counsel or other persons during the deposition shall not impede, delay or frustrate the fair examination of the deponent. If the court finds an impediment, delay or other conduct has frustrated the fair examination of the deponent, it may impose upon the persons responsible appropriate sanctions, including the reasonable costs and attorney's fees incurred by parties as a result thereof, and those listed in Rule 444 [9].

2. Any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such a manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or in the district court or magistrates division where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 409 [12]. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 443.D [8] apply to the award of expenses incurred in relations to the motion.

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