

of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of the Presiding Officer, be served upon any party after filing of the answer. Each matter about which an admission is requested shall be separately set forth.

(b) *Procedure for response.* The matter about which an admission is requested will be deemed admitted unless within thirty (30) days after service of the request, or within such shorter or longer time as the Presiding Officer may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or the party's representative and stating the reasons for the objections. The answer shall specifically admit or deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission. When good faith requires that a party qualify an answer or deny only a part of the matter to which an admission is requested, the party shall specify the portion that is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny a fact unless the party states that he/she has made reasonable inquiry and that the information known or readily available to him/her is insufficient to enable him/her to admit or deny a fact. A party who considers that a matter to which an admission has been requested presents a genuine issue for hearing may not, on that ground alone, object to the request but may deny the matter or set forth reasons why the party cannot admit or deny it. The party who has requested an admission may move to determine the sufficiency of any answer or objection in accordance with §1025.36 of these Rules. If the Presiding Officer determines that an answer does not comply with the requirements of this section, he/she may order that the matter be deemed admitted or that an amended answer be served.

(c) *Effect of admission.* Any matter admitted under this section is conclu-

sively established unless the Presiding Officer on motion permits withdrawal or amendment of such admission. The Presiding Officer may permit withdrawal or amendment when the presentation of the merits of the action will be served thereby and the party who obtained the admission fails to satisfy the Presiding Officer that withdrawal or amendment will prejudice that party in maintaining an action or defense on the merits. Any admission made by a party under this section is for the purposes of the pending adjudication only and is not an admission by that party for any other purposes, nor may it be used against that party in any other proceedings.

§1025.35 Depositions upon oral examination.

(a) *When depositions may be taken.* At any time after the first prehearing conference, upon leave of the Presiding Officer and under such terms and conditions as the Presiding Officer may prescribe, any party may take the deposition of any other party, including the agents, employees, consultants, or prospective witnesses of that party at a place convenient to the deponent. The attendance of witnesses and the production of documents and things at the deposition may be compelled by subpoena as provided in §1025.38 of these rules.

(b) *Notice of deposition—(1) Deposition of a party.* A party desiring to take a deposition of another party to the proceedings shall, after obtaining leave from the Presiding Officer, serve written notice of the deposition on all other parties and the Presiding Officer at least ten (10) days before the date noticed for the deposition. The notice shall state:

(i) The time and place for the taking of the deposition;

(ii) The name and address of each person to be deposed, if known, or if the name is not known, a general description sufficient to identify him/her; and

(iii) The subject matter of the expected testimony. If a subpoena *duces tecum* is to be served on the person to be deposed, the designation of the materials to be produced, as set forth in

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the subpoena, shall be attached to or included in the notice of deposition.

(2) *Deposition of a non-party.* A party desiring to take a deposition of a person who is not a party to the proceedings shall make application for the issuance of a subpoena, in accordance with §1025.38 of these rules, to compel the attendance, testimony, and/or production of documents by such non-party. The party desiring such deposition shall serve written notice of the deposition on all other parties to the proceedings, after issuance of the subpoena. The date specified in the subpoena for the deposition shall be at least twenty (20) days after the date on which the application for the subpoena is made to the Presiding Officer.

(3) *Opposition to notice.* A person served with a notice of deposition may oppose, in writing, the taking of the deposition within five (5) days of service of the notice. The Presiding Officer shall rule on the notice and any opposition and may order the taking of all noticed depositions upon a showing of good cause. The Presiding Officer may, for good cause shown, enlarge or shorten the time for the taking of a deposition.

(c) *Persons before whom depositions may be taken.* Depositions may be taken before any person who is authorized to administer oaths by the laws of the United States or of the place where the examination is held. No deposition shall be taken before a person who is a relative, employee, attorney, or representative of any party, or who is a relative or employee of such attorney or representative, or who is financially interested in the action.

(d) *Taking of deposition—(1) Examination.* Each deponent shall testify under oath, and all testimony shall be recorded. All parties or their representatives may be present and participate in the examination. Evidence objected to shall be taken subject to any objection. Objections shall include the grounds relied upon. The questions and answers, together with all objections made, shall be recorded by the official reporter before whom the deposition is taken. The original or a verified copy of all documents and things produced for inspection during the examination of the deponent shall, upon a request of

any party present, be marked for identification and made a part of the record of the deposition.

(2) *Motion to terminate or limit examination.* At any time during the deposition, upon motion of any party or of the deponent, and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass or oppress the deponent or party, the Presiding Officer may order the party conducting the examination to stop the deposition or may limit the scope and manner of taking the deposition as provided in §1025.31(d) of these rules.

(3) *Participation by parties not present.* In lieu of attending a deposition, any party may serve written questions in a sealed envelope on the party conducting the deposition. That party shall transmit the envelope to the official reporter, who shall unseal it and read the questions to the deponent.

(e) *Transcription and filing of depositions—(1) Transcription.* Upon request by any party, the testimony recorded at a deposition shall be transcribed. When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and signature and shall be read to or by the deponent, unless such examination and signature are waived by the deponent. Any change in form or substance which the deponent desires to make shall be entered upon the deposition by the official reporter with a statement of the reasons given by the deponent for making them. The deposition shall then be signed by the deponent, unless the deponent waives signature or is ill or cannot be found or refuses to sign. If the deposition is not signed by the deponent within thirty (30) days of its submission to him/her, the official reporter shall sign the deposition and state on the record the fact of the waiver of signature or of the illness or absence of the deponent or of the refusal to sign, together with a statement of the reasons therefor. The deposition may then be used as fully as though signed, in accordance with paragraph (1) of this section.

(2) *Certification and filing.* The official reporter shall certify on the deposition that it was taken under oath and that the deposition is a true record of the

testimony given and corrections made by the deponent. The official reporter shall then seal the deposition in an envelope endorsed with the title and docket number of the action and marked "Deposition of [name of deponent]" and shall promptly file the deposition with the Secretary. The Secretary shall notify all parties of the filing of the deposition and shall furnish a copy of the deposition to any party or to the deponent upon payment of reasonable charges.

(f) *Costs of deposition.* The party who notices the deposition shall pay for the deposition. The party who requests transcription of the deposition shall pay for the transcription.

(g) *Failure to attend or to serve subpoena; expenses.* If a party who notices a deposition fails to attend or conduct the deposition, and another party attends in person or by a representative pursuant to the notice, the Presiding Officer may order the party who gave the notice to pay to the attending party the reasonable expenses incurred. If a party who notices a deposition fails to serve a subpoena upon the deponent and as a result the deponent does not attend, and if another party attends in person or by a representative because that party expects the deposition to be taken, the Presiding Officer may order the party who gave notice to pay to the attending party the reasonable expenses incurred.

(h) *Deposition to preserve testimony—*
 (1) *When available.* By leave of the Presiding Officer, a party may take the deposition of his/her own witness for the purpose of perpetuating the testimony of that witness. A party who wishes to conduct such a deposition shall obtain prior leave of the Presiding Officer by filing a motion. The motion shall include a showing of substantial reason to believe that the testimony could not be presented at the hearing. If the Presiding Officer is satisfied that the perpetuation of the testimony may prevent a failure of justice or is otherwise reasonably necessary, he/she shall order that the deposition be taken.

(2) *Procedure.* Notice of a deposition to preserve testimony shall be served at least fifteen (15) days prior to the deposition unless the Presiding Officer

authorizes less notice when warranted by extraordinary circumstances. The deposition shall be taken in accordance with the provisions of paragraph (d) of this section. Any deposition taken to preserve testimony shall be transcribed and filed in accordance with paragraph (e) of this section.

(i) *Use of depositions.* At the hearing or upon a petition for interlocutory appeal, any part or all of a deposition may be used against any party who was present or represented at the deposition or who had reasonable notice of the deposition, in accordance with any of the following:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of anyone who at the time of the taking of the deposition was an officer, director, managing agent, or person otherwise designated to testify on behalf of a public or private corporation, partnership or unincorporated association or governmental entity which is a party to the proceedings, may be used by any adverse party for any purpose.

(3) The deposition of a witness may be used by any party for any purpose if the Presiding Officer finds:

(i) That the witness is dead; or

(ii) That the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(iii) That the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) That such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard for the importance of presenting the testimony of witnesses orally during the hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, any other party may move to introduce any other part of the deposition.