

CHAPTER 6

DEPOSITIONS

I. General Authority to Take Depositions

In this Chapter, “officer” refers to the court reporter.

Official court reporters may be authorized by the Administrative Director of Courts (ADC) to take depositions upon the recommendation of the presiding circuit judge and the judge employing the court reporter; provided, however, that each official court reporter who is authorized to take depositions must take particular care to see that such work does not interfere in any way with the preparation of transcripts of cases on appeal and other routine work of the court. The ADC is authorized to cancel, modify, suspend, or rescind such authorization at any time when, in his opinion, such action is in the best interest of the administration of justice. [[Rule 12\(A\), Ala. R. Jud. Admin.](#)]

In some courts, the judge may issue a blanket order authorizing official court reporters to take depositions.

[Rule 28\(d\), Ala. R. Civ. P.](#), provides that no deposition shall be taken before a person who is a relative, employee, attorney, or counsel of any of the parties, or who is a relative or employee of such attorney or counsel, or who is financially interested in the action.

Authority to Administer the Oath. Official court reporters, special roving court reporters, special court reporters, supernumerary court reporters, and other court reporters licensed by the Alabama Board of Court Reporting may administer an oath to a witness in a deposition or a judicial proceeding. Further, they may swear a witness remotely by the use of audiovisual or videoconferencing technology if the deposition or judicial proceeding is conducted with the use of audiovisual or videoconferencing equipment that allows the court reporter and the witness simultaneously to view and to orally communicate with each other, provided that the court reporter can positively identify the witness. [Rule 29\(G\), Ala. R. Jud. Admin.](#)

Relating to attestations by notaries public (if official court reporters, special roving court reporters, special court reporters, supernumerary court reporters, and other court reporters licensed by the Alabama Board of Court Reporting also are notaries public), Section 36-20-73.1, Ala. Code 1975, provides that, for purposes of this article, and subject to subsections (e) to (g), inclusive, an individual may personally appear

before an acknowledging notary by either of the following: (1) physically appearing before the notary as provided in subsection (a) which provides “[e]xcept as otherwise provided in this section, any signature acknowledged by a notary public shall be executed within this state and shall be executed in the physical presence of the notary public at the time of the acknowledgment, only after the notary public has positively identified the prospective signatory via personal knowledge of the affiant or the examination of photo identification issued by a governmental entity or agency”; or (2) appearing through the use of two-way audio-video communication technology that allows a notary public and a remotely located signatory to communicate with each other simultaneously by sight and sound, provided that the notary public is physically located in this State and the two-way audio-video communication is recorded and maintained for a period of seven years by the notary public. If appearing through the use of two-way audio-video communication, the identity of the signatory shall be verified by the notary public using either of the following methods: (1) the personal knowledge of the notary public of the identity of the signatory; or (2)a. the presentation of two valid forms of government issued identification, one of which shall include the face and signature of the signatory; and b. a process by which the notary public verifies the identity of the signatory through a review of public or private data sources. This Section also provides that the official date and time of the notarization is the date and time the notary public witnessed the signature, including the date and time the signature was witnessed via two-way audio-video communication technology. All documents used during the two-way audio-video communication, shall be provided to the notary for his or her authentication and original signature. Any action taken before July 1, 2021, allowing for the remote notarization of signatures under the Emergency Management Act of 1955, Article 1 of Chapter 9 of Title 31, is ratified and confirmed.

Section 36-20-75, Ala. Code 1975, provides a list of acts for which an individual is guilty of a Class C misdemeanor, and a list of acts for which a notary public is guilty of a Class D felony. Additionally, this section provides that an individual who knowingly solicits, coerces, or in any material way influences a notary to commit official misconduct is subject to the same level of punishment as the notary.

[Rule 28\(a\), Ala. R. Civ. P.](#), provides that within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions to be used in this State shall be taken before

an officer authorized to administer oaths by the laws of the United States, or of the State of Alabama, or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.

II. Applicability of Rules of Procedure Relating to Depositions

In civil cases, the Alabama Rules of Civil Procedure (specifically [Rule 30](#)) applies to the taking of depositions.

In criminal cases, the Alabama Rules of Criminal Procedure (specifically [Rule 16.6](#)) applies to the taking of depositions. Rule 16.6(d) of these Rules provides that “[...]subject to such additional conditions as the court shall provide, a deposition shall be taken and filed in the manner provided in civil actions, except as otherwise provided in these rules, provided that (1) in no event shall a deposition be taken of a defendant without the defendant’s consent, and (2) the scope and manner of examination and cross-examination shall be the same as would be allowed at trial. The state shall make available to the defendant or the defendant’s counsel for examination and use at the taking of the deposition any statement of the witness being deposed that is in the possession of the state and to which the defendant would be entitled at trial.”

In addition, in criminal prosecutions, [Section 12-21-264, Ala. Code 1975](#), provides for the taking of a deposition or videotaped deposition when victims or witnesses are unavailable because of exceptional circumstances.

In juvenile court cases, the Alabama Rules of Civil Procedure applies to cases that are civil in nature, and the Alabama Rules of Criminal Procedure applies to cases that are criminal in nature. [[Rule 1\(A\), Ala. R. Juv. P.](#)]

III. Procedure for Taking Depositions

A. Examination and Cross-Examination of Witnesses

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 and may be videotaped or recorded by other equivalent technology in accordance with subdivision (b)(4) of this rule.

All objections made at the 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 and that party shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim. [\[Rule 30\(c\), Ala. R. Civ. P.\]](#)

The testimony at a deposition may be recorded on videotape, or by other equivalent technology, in addition to the stenographic record. Any such deposition will be conducted in a manner to replicate, to the extent feasible, the presentation of evidence at a trial. If the deposition is to be so recorded, the notice given pursuant to subdivision (b)(1) of this rule shall designate the person before whom the deposition shall be taken, the manner of recording, and the reason why such recording is necessary or desirable, and include other provisions to assure that the recorded testimony will be accurate and trustworthy and that the witness will be treated fairly. The party requesting videotaping or recording by other equivalent technology will bear the expense associated with such videotaping or recording. Any party may, at its own expense, obtain a copy of the recording. These expenses may be taxed as costs at the conclusion of the action, if appropriate. The written transcript by the court reporter shall constitute the official record of the deposition for purposes of subdivisions (e) and (f) of this rule. [Rule 30\(b\)\(4\), Ala. R. Civ. P.](#)

B. Submission to Witness for Review and Changes (Read and Sign/Errata Sheet)

When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within thirty (30) days of its submission to the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part. [\[Rule 30\(e\), Ala. R. Civ. P.\]](#)

C. Certification and filing by the officer

The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. Unless otherwise ordered by the court, the officer shall then securely seal the deposition in an envelope indorsed with the title of the action and marked “Deposition of [here insert name of witness]” and shall promptly file it with the court in which the action is pending or send it by registered or certified mail to the clerk thereof for filing. [\[Rule 30\(f\)\(1\), Ala. R. Civ. P.\]](#)

If stipulated, filing the original transcript of the deposition with the court can be waived.

The certificate must include the court reporter’s Alabama Certified Court Reporter License number, the date of expiration, the court reporter’s signature, and the date the transcript was

certified. (See [ABCR Rules and Regulations, Chapter 257-X-4-.01\[j\].](#))

Electronic Signatures. The requirement that any court record or document be signed is met by use of an electronic signature. An electronic signature is considered to be the original signature upon the court record or document for all purposes under these Rules and other applicable statutes or rules. Electronic signatures shall either: (1) show an image of such signature as it appears on the original document or appended as an image file or (2) bear the name of the signatory preceded by an “/s/” typed in the space where the signature would otherwise appear, as follows: /s/ Jane Doe. The Administrative Director of Courts may also designate other means of verification to authenticate a document. Such verification may include biometric measurements or computer-based encryption methodology. When a clerk, judge, magistrate, or any custodian of court records is required to provide a signature during the administration of his or her duties, the requirement is satisfied if the document is signed by electronic means. The Administrative Director of Courts may promulgate policies or procedures to assure the security and reliability of signatures executed by officials of the Unified Judicial System or through any application for electronic filing maintained or operated by the Unified Judicial System. [[Rule 30\(G\), Ala. R. Jud. Admin.](#).]

IV. Deposition by Telephone or Other Remote Means

Upon written stipulation by the parties or upon the court's order, a deposition may be taken by telephone or other remote means using audio-video communication technology. For the purposes of this Rule, and [Rules 28\(a\), 37\(a\)\(1\), 37\(b\)\(1\), and 45\(a\)](#) and [Rule 30\(b\)\(8\), Ala. R. Civ. P.](#), a deposition taken by telephone or by other remote means is taken in the circuit and at the place where the deponent is to answer questions propounded to the deponent. (See [Rule 30\(b\)\(7\), Ala. R. Civ. P.](#))

[Rule 30\(b\)\(8\), Ala. R. Civ. P.](#), provides that “. . . [i]n every deposition that proceeds by videoconferencing in accordance with Rule 30(b)(7) above, the witness may be sworn in remotely by audio-video communication technology if the deposition is conducted by

audio-video communication equipment that allows the court reporter and the witness simultaneously to view and communicate with each other. If not located within the State of Alabama, a witness may consent to being placed under oath remotely as described in this subdivision.”

V. Video Depositions

The testimony at a deposition may be recorded on videotape, or by other equivalent technology, in addition to the stenographic record. The written transcript by the court reporter shall constitute the official record of the deposition for purposes of subdivisions (e) and (f) of this rule. ([Rule 30\(b\)\(4\), Ala. R. Civ. P.](#)) ([Rule 3, Alabama Rules for Using Videotape Equipment to Record Court Proceedings](#))

Official court reporters, special roving court reporters, special court reporters, and supernumerary court reporters licensed by the Alabama Board of Court Reporting may administer an oath to a witness in a deposition or a judicial proceeding. Further, they may swear a witness remotely by the use of audiovisual or videoconferencing technology if the deposition or judicial proceeding is conducted with the use of audiovisual or videoconferencing equipment that allows the court reporter and the witness simultaneously to view and to orally communicate with each other, provided that the court reporter can positively identify the witness. [[Rule 29\(G\), Ala. R. Jud. Admin.](#)]

VI. Reading Depositions in Court

If depositions are read during trial proceedings, all proceedings during the reading should be included in the record unless otherwise instructed by the judge.

VII. Deposition Exhibits

Court reporters should take charge of marking exhibits in depositions. It is less confusing if exhibits are marked numerically beginning with Deposition Exhibit No. 1. Then, if the exhibits are used in court, there is no conflict.

See deposition-related examples at the end of this Chapter.