

Alabama Rules of Civil Procedure

V. DEPOSITIONS AND DISCOVERY

Rule 31.

Depositions upon written questions.

(a) *Serving Questions; notice.* After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court and on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, 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, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

Within fifteen (15) days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within ten (10) days after being served with cross questions, a party may serve redirect questions upon all other parties. Within five (5) days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

Any other party to the action shall, within the time allowed to file cross questions, have the right to demand reasonable notice of the time and place of taking the testimony and to attend such examination and cross-examine the witness or witnesses orally. In the event of such oral cross-examination, the party taking the deposition may at the same time and place on the conclusion of such oral cross-examination examine the witness orally in rebuttal.

(b) *Officer to take responses and prepare record.* A copy of a notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the

deposition, attaching thereto the copy of the notice and the questions received by the officer.

(c) *Notice of filing.* When the deposition is filed, the party taking it shall promptly give notice thereof to all other parties.

(dc) *District court rule.* Rule 31 applies in the district courts in those instances when a deposition on written questions is permitted by Rule 26(dc).

[Amended 12-17-84; Amended 6-12-90, eff. 10-1-90; Amended eff. 10-1-95.]

Committee Comments on 1973 Adoption

The taking of depositions upon written questions was covered at Tit. 7, § 459, Code of Ala. This provision differs from the Federal Rule 31 in that it gives the party receiving notice of such a deposition the opportunity to attend the deposition in person and examine the witness orally. This right is invoked by making demand upon the person taking the deposition of the time and place of the taking of the testimony. In the event this right is invoked, of course, the party taking the deposition also has the right to attend the deposition and examine the witness orally in rebuttal.

This rule provides an alternative method of taking depositions which a party, in his option, may employ, rather than taking the deposition or oral examination as provided for in Rule 30. Depositions on written questions, authorized by this rule, should be carefully distinguished from the written interrogatories to a party authorized by Rule 33.

Committee Comments to October 1, 1995, Amendment to Rule 31

The amendment is technical. No substantive change is intended.