

IN THE SUPREME COURT OF ALABAMA
November 23, 2020

ORDER

IT IS ORDERED that Rule 30(b), Alabama Rules of Civil Procedure, be amended to read in accordance with Appendix A to this order;

IT IS FURTHER ORDERED that the Committee Comments to the amendment to Rule 30(b) be adopted to read in accordance with Appendix B to this order;

IT IS FURTHER ORDERED that the amendment of Rule 30(b) and the adoption of the Committee Comments thereto are effective immediately; and

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to the follow Rule 30:

"Note from the reporter of decisions: The order amending Rule 30(b) and adopting the Committee Comments thereto, effective November 23, 2020, is published in that volume of Alabama Reporter that contains Alabama cases from __ So. 3d."

Parker, C.J., and Shaw, Wise, Sellers, Mendheim, Stewart,
and Mitchell, JJ., concur.

Bolin and Bryan, JJ., dissent.

Witness my hand this 23rd day of November, 2020.

A handwritten signature in black ink, reading "Julia Jordan Weller". The signature is written in a cursive style with a loop at the end of the last name.

Clerk, Supreme Court of Alabama

FILED
November 23, 2020
1:32 pm
Clerk
Supreme Court of Alabama

APPENDIX A

RULE 30(b)

(b) Notice of Examination; General Requirements; Special Notice; Videotaping or Other Equivalent Technology; Procurement of Documents and Things; Deposition of Organization.

(1) 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.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the circuit where the action is pending and more than one hundred (100) miles from the place of trial, or is about to go out of 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 (thirty-) 30-day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and the attorney's signature constitutes a certification by the attorney that to the best of the attorney's knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11 are applicable to the certification.

If a party shows that when the party was served with notice under this subdivision (b)(2) the party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition, the deposition may not be used against the party.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) 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.

(5) The notice to a party deponent may be accompanied by a request that the party, at the taking of a deposition, produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of Rule 26(b). If the request accompanies the summons and complaint or is new, the party deponent may, within 45 days, serve upon the party taking the deposition, written objection to inspection or copying of any or all of the designated materials; otherwise, the deponent must serve any such objection within 14 days. If objection is made, the party taking the deposition shall not be entitled to inspect the materials except pursuant to an order of the court. The party taking the deposition may move at any time for an order under Rule 37(a) with respect to any objection to the request or any part thereof, or any failure to produce or permit inspection as requested.

(6) 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 subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate in writing, or the court may upon motion order, that a deposition 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), 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.

(8) In 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.

APPENDIX B

Committee Comments to Amendment to Rule 30(b) Effective November 23, 2020

The amendment to Rule 30(b)(7) explicitly permits, under specified circumstances, a deposition to be taken by use of audio-video communication technology. Subdivision (8) is added to allow the attending court reporter to swear in a witness, even if in a different location, by use of such technology.