

Rule 15. Depositions

(a) WHEN TAKEN.

(1) *In General.* A party may move that a prospective witness be deposed in order to preserve testimony for trial. The court may grant the motion because of exceptional circumstances and in the interest of justice. If the court orders the deposition to be taken, it may also require the deponent to produce at the deposition any designated material that is not privileged, including any book, paper, document, record, recording, or data.

(2) *Detained Material Witness.* A witness who is detained under D.C. Code § 23-1326 (2012 Repl.) may request to be deposed by filing a written motion and giving notice to the parties. The court may then order that the deposition be taken within a reasonable period of time and may discharge the witness after the witness has signed under oath the deposition transcript.

(b) NOTICE.

(1) *In General.* A party seeking to take a deposition must give every other party reasonable written notice of the deposition's date and location. The notice must state the name and address of each deponent. If requested by a party receiving the notice or by the deponent, the court may, for good cause, change the deposition's date or location.

(2) *To the Custodial Officer.* A party seeking to take the deposition must also notify the officer who has custody of the defendant of the scheduled date and location.

(c) DEFENDANT'S PRESENCE.

(1) *Defendant in Custody.* Except as authorized by Rule 15(c)(3), the officer who has custody of the defendant must produce the defendant at the deposition and keep the defendant in the witness's presence during the examination, unless the defendant:

(A) waives in writing the right to be present; or

(B) persists in disruptive conduct justifying exclusion after being warned by the court that disruptive conduct will result in the defendant's exclusion.

(2) *Defendant Not in Custody.* Except as authorized by Rule 15(c)(3), a defendant who is not in custody has the right upon request to be present at the deposition, subject to any conditions imposed by the court. If the government tenders the defendant's expenses as provided in Rule 15(d) but the defendant still fails to appear, the defendant—absent good cause—waives both the right to appear and any objection to the taking and use of the deposition based on that right.

(3) *Taking Depositions Outside the United States Without the Defendant's Presence.* The deposition of a witness who is outside the United States may be taken without the defendant's presence if the court makes case-specific findings of all the following:

(A) the witness's testimony could provide substantial proof of a material fact in a felony prosecution;

(B) there is a substantial likelihood that the witness's attendance at trial cannot be obtained;

(C) the witness's presence for a deposition in the United States cannot be obtained;

(D) the defendant cannot be present because:

(i) the country where the witness is located will not permit the defendant to attend the deposition;

(ii) for an in-custody defendant, secure transportation and continuing custody cannot be assured at the witness's location; or

(iii) for an out-of-custody defendant, no reasonable conditions will assure an appearance at the deposition or at trial or sentencing; and

(E) the defendant can meaningfully participate in the deposition through reasonable means.

(d) EXPENSES. If the deposition was requested by the government, the court may—or if the defendant is unable to bear the deposition expenses, the court must—order the government to pay:

(1) any reasonable travel and subsistence expenses of the defendant and the defendant's attorney to attend the deposition; and

(2) the costs of the deposition transcript.

(e) MANNER OF TAKING.

(1) *In General.* Unless these rules or a court order provides otherwise, a deposition must be taken and filed in the same manner as a deposition in a civil action, except that:

(A) a defendant may not be deposed without that defendant's consent.

(B) the scope and manner of the deposition examination and cross-examination must be the same as would be allowed during trial.

(2) *On Written Interrogatories.* When the examination is on written interrogatories, at or before the time fixed in the notice, any other party may file cross interrogatories. Any subsequent interrogatories may be filed with leave of court. If a party fails to file written interrogatories or fails to attend an oral examination, the person before whom the deposition is taken must propound the interrogatories listed in D.C. Code § 23-108 (2012 Repl.).

(3) *Statements of the Deponent.* The party taking the deposition must provide to the opposing party, for use at the deposition, any statement of the deponent in that party's possession to which the opposing party would be entitled at trial under Rule 26.2. If the deposing party disobeys an order to produce or deliver a statement, the court must strike the witness's testimony from the record.

(f) ADMISSIBILITY AND USE AS EVIDENCE. An order authorizing a deposition to be taken under this rule does not determine its admissibility. A party may use all or part of a deposition as provided by the law of evidence.

(g) OBJECTIONS. A party objecting to deposition testimony or evidence must state the grounds for the objection during the deposition.

(h) DEPOSITIONS BY AGREEMENT PERMITTED. The parties may by agreement take and use a deposition with the court's consent.

COMMENT TO 2017 AMENDMENTS

This rule incorporates the 2012 federal amendments to subsection (c)(3) and section (f). The amendments authorize the taking of a deposition outside the United States without the defendant present if the court makes certain case-specific findings. The rule also specifically states that an order authorizing a deposition does not determine its admissibility.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Subparagraph (a)(2) cites the D.C. Code provision concerning the detention of material witnesses, D.C. Code § 23-1326 (2012 Repl.). In addition, this rule retains the requirement that a detained material witness be deposed “within a reasonable period of time,” which is language not found in the federal rule.

Subparagraph (b)(1) allows a deponent as well as a party to move for a change in the date or place of a deposition.

Paragraph (e) is substantially different from the federal rule. First, subparagraph (e)(2) specifies a procedure that must be followed when a deposition is to be conducted on interrogatories. Second, subparagraph (e)(3) provides for “reverse Jencks” disclosures that parallel the government’s obligations. Both of these differences are retained from the former rule, although the Jencks and “reverse Jencks” provisions of (e)(3) have been combined into a single paragraph, simplified by referring to Rule 26.2, and made consistent with that rule.

Paragraph (f) omits reference to the Federal Rules of Evidence.