

Rule 15. Depositions

(a) When taken. Whenever due to exceptional circumstances of the case it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved for use at trial, the Family Court may upon motion of such party and notice to the parties order that testimony of such witness be taken by deposition and that any designated books, papers, documents, record, recording, or other material, not privileged, be produced at the same time and place. If a witness is detained for inability to comply with any condition of release imposed to assure his appearance to testify at a trial or hearing, the Family Court on written motion of the witness and upon notice to the parties may direct that his deposition be taken within a reasonable period of time. After the deposition has been subscribed the Family Court may discharge the witness.

(b) Notice of taking. The party at whose instance a deposition is to be taken shall give to every other party written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, or upon motion of the person to be examined, the Family Court for cause shown may extend or shorten the time or change the place for taking the deposition. The officer having custody of a respondent shall be notified of the time and place set for the examination and shall, unless the respondent waives in writing the right to be present, produce him at the examination and keep him in the presence of the witness during the examination, unless, after being warned by the Family Court that disruptive conduct will cause him to be removed from the place of the taking of the deposition, he persists in conduct which is such as to justify his being excluded from that place. A respondent not in custody shall have the right to be present at the examination upon request subject to such terms as may be fixed by the Family Court, but his failure, absent good cause shown, to appear after notice and tender of expenses in accordance with subdivision (c) of this Rule shall constitute a waiver of that right and of any objection to the taking and use of the deposition based upon that right.

(c) Payment of expenses. Whenever a deposition is taken at the instance of the government, or whenever a deposition is taken at the instance of a respondent who is unable to bear the expenses of the taking of the deposition the Family Court may direct that the expenses of travel and subsistence of the respondent and his attorney for attendance at the examination and the cost of the transcript of the deposition shall be paid by the government.

(d) How taken.

(1) Generally. Subject to such additional conditions as the Family Court shall provide, the deposition shall be taken and filed in the manner provided in civil actions except as otherwise provided in this Rule, provided that (1) in no event shall a deposition be taken of a party respondent without his consent, and (2) the scope and manner of examination and cross-examination shall be such as would be allowed in the trial itself. 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 shall propound the interrogatories listed in D.C. Code 1981, § 23-108.

(2) Depositions at the instance of the government. When a deposition is taken at the instance of the government, the government shall make available to the respondent or his

counsel for examination and use at the taking of the deposition any statement of the witness being deposed which is in the possession of the government and to which the respondent would be entitled at the trial.

(3) Depositions at the instance of the defense. When a witness is being deposed at the instance of the respondent, the respondent or his counsel shall likewise make available to the government for examination and use at the deposition any statement of the witness being deposed in the possession of the respondent which relates to the subject matter to which the witness has testified, in the same manner as provided for depositions at the instance of the government. The term "statement" as used in this subparagraph means a written statement made by the witness and signed or otherwise adopted or approved by him, or a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness to the respondent, his counsel or his agent and recorded contemporaneously with the making of such oral statement. If the respondent elects not to comply with an order of the Family Court to deliver such a statement, or portions thereof, to the government as the Family Court may direct, the Family Court shall strike from the record the testimony of the witness.

(e) Use.

(1) At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if the witness is unavailable. "Unavailability as a witness" includes situations in which the declarant:

(A) Is exempted by ruling of the Family Court on the ground of privilege from testifying concerning the subject matter of his statement; or

(B) Persists in refusing to testify concerning the subject matter of his statement despite an order of the Family Court to do so; or

(C) Testifies to a lack of memory of the subject matter of his statement; or

(D) Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(E) Is absent from the hearing and the proponent of his statement has been unable to procure his attendance by process or other reasonable means.

A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing [wrongdoing] of the proponent of his statement for the purpose of preventing the witness from attending or testifying.

(2) At the factfinding hearing or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if the witness gives testimony at the hearing inconsistent with his deposition. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

(f) Objections to deposition testimony. Objections to deposition testimony or evidence or parts thereof and the grounds for the objection shall be stated at the time of the taking of the deposition.

(g) Deposition by agreement not precluded. Nothing in this Rule shall preclude the taking of a deposition, orally or upon written questions, or the use of a deposition, by agreement of the parties with the consent of the Court.

COMMENT

Substantially identical to SCR Crim 15.