

**JUDGE CASTILLO'S DEPOSITION RULES --
EFFECTIVE FOR ALL PENDING CASES AS OF
JUNE 19, 2002**

RULE NO. 1 - DEPOSITION OBLIGATIONS OF ATTORNEY

An attorney representing a party or a deponent at a deposition (1) in a case pending in the Court regardless of where the deposition is taken or (2) taken pursuant to a subpoena issued by the Court shall be subject to the jurisdiction of the Court for purposes of the Court's enforcement of all federal rules, local rules, and orders applicable to the deposition. By undertaking the representation of the party or deponent the attorney represents to the Court that he or she will not, for tactical or any other reasons, ask questions that are known to be improper, make objections that are known to be groundless, instruct a witness not to answer a question without grounds for doing so, or engage in any conduct that is inconsistent with his or her ethical obligations or principles of civility or which denigrates or harasses the deponent or counsel. Any videotaped deposition should comply with the Court's standing order regarding videotaped depositions.

RULE NO. 2 - PREPARATION/DURATION

Any attorney who takes a deposition in a case pending before the Court should be adequately prepared to do so, have a thorough familiarity with the claims and defenses involved in the case, have attempted to learn what role the deponent played in the facts of the case, and have attempted to become familiar with the relevant documents. Any deposition that is anticipated to last more than eight hours requires prior Court approval unless agreed upon by the parties.

RULE NO. 3 - QUESTIONING

All questions asked of a deponent, including questions regarding a deponent's background, should be restricted to matters that are relevant to the subject matter involved in the action as required by Fed. R. Civ. P. 26(b)(1), and all questioning should be consistent with securing the just, speedy and inexpensive determination of the action. Questions should not be asked in a manner that unduly prolongs the deposition or posed for the purpose of embarrassing, intimidating or harassing the deponent. Generally, unless agreed upon by the parties, only one attorney is allowed to question on behalf of each party without prior Court approval.

RULE NO. 4 - SCOPE OF QUESTIONING

Examining counsel should not abuse the broad scope of discovery allowed by the Federal Rules of Civil Procedure. For example, before questioning a deponent in areas peripheral to the case or in which the deponent appears to have had limited or no involvement, examining counsel should first establish the extent of the deponent's knowledge. Examining counsel should consider carefully the need for continued questioning of the deponent in areas in which it has been established that the deponent has little or no knowledge.

RULE NO. 5 - MANNER OF QUESTIONING

Examining counsel should avoid repeating a question once it is clear that the deponent understands the question and has given a complete answer. However, it is proper for examining counsel to (1) explore in detail a deponent's answer and (2) attempt to refresh the deponent's recollection.

RULE NO. 6 - OBJECTIONS

Counsel should not abuse their right to object to questions. The propriety of a question usually depends on the facts and issues involved in the case, the role and knowledge of the deponent, and the prior questions asked of and answers given by the deponent. However, as examples of questions that have commonly resulted in improper objections, it would seldom be appropriate to object to questions

- (1) regarding the deponent's personal knowledge of facts that support or contradict allegations or statements in a complaint, other pleadings or answers to interrogatories;
- (2) regarding the deponent's discussions about the case or issues involved in the case with other witnesses, including testifying expert witnesses, or
- (3) regarding the amount of time spent by the deponent with the deponent's attorney preparing for the deposition.

RULE NO. 7 - MAKING OBJECTIONS

A. Obligations of Counsel

All counsel participating in a deposition have an obligation to conduct the deposition in such a manner that it will further the just, speedy, and inexpensive determination of the case. Examining counsel shall satisfy that obligation by complying with Fed. R. Civ. P. 30(c) and (d) and all other applicable federal rules and local rules. Objecting counsel shall satisfy that obligation by complying with all applicable federal rules and local rules, keeping in mind the provisions of Fed. R. Civ. P. 32(d)(3) regarding waiver of objections for failure to make them at the deposition.

B. Form of Objections

Under Fed. R. Civ. P. 30(d)(1), objections are to be stated “concisely” and in a “non-argumentative and non-suggestive manner.” Under this rule counsel may interpose an objection by stating “objection” and the legal grounds for the objection. Objections in the presence of the deponent made to suggest an answer to the deponent are improper.

C. Objecting Counsel Not to Instruct Deponent Not to Answer; Exception

Even if an objection is made, objecting counsel shall not instruct a deponent not to answer except in those circumstances where an instruction not to answer is permitted by Fed. R. Civ. P. 30(d)(1). In these circumstances, the testimony shall be taken subject to the objection in accordance with Fed. R. Civ. P. 30(c).

D. Procedure Following Objecting Counsel's Instruction to Deponent Not to Respond

(1) If an objecting counsel instructs a deponent not to answer to preserve a privilege or to enforce a limitation on evidence previously directed by the Court, examining counsel shall proceed to complete the questioning of the deponent on any matters not subject to the instruction before suspending the deposition, unless; (a) examining counsel in good faith believes that the deposition cannot proceed without a determination by the Court on the propriety of the instruction not to answer; and (b) examining counsel has made a good-faith attempt to resolve the dispute at the deposition in accordance with Fed. R. Civ. P. 26(c) and Local General Rule 37.2.

(2) If an objecting counsel instructs a deponent not to answer in order to present a motion under Fed. R. Civ. P. 30(d)(4), objecting and examining counsel shall attempt, in good faith, to agree to set aside the subject matter that elicited the objection and complete the deposition on all remaining areas of inquiry. During the deposition, objecting and examining counsel shall also attempt, in good faith and in compliance with Fed. R. Civ. P. 26(c) and Local Rule 37.2, to resolve the objection, attempting to contact the Court where appropriate. If objecting and examining counsel cannot resolve the objection or agree to set aside the subject matter that elicited the objection, the deposition shall be suspended.

E. Suspended Deposition & Time to File Motion Pursuant to Fed. R. Civ. P. 30(d)(4)

If a deposition is suspended because of an objecting counsel's instruction not to answer and stated intention to proceed with a motion under Fed. R. Civ. P. 30(d)(4), objecting counsel must serve that motion within 10 days of the suspension of the deposition unless some longer or shorter time is agreed upon by the parties and deponent or ordered by the Court. If the Fed. R. Civ. P. 30(d)(4) motion is not timely served in accordance with this Rule, the Court may order objecting counsel to pay the costs incurred in the suspension of the deposition or may grant any other relief the Court deems appropriate.

RULE NO. 8 - DEPONENT/ATTORNEY COMMUNICATIONS

Between the time of a pending question and the completion of the answer, counsel for deponent may confer with the deponent off-the-record only for the purpose of deciding whether to assert a privilege.

RULE NO. 9 - DOCUMENTS

Except for good cause or unless the parties otherwise agree, examining counsel shall provide to the deponent's counsel and other counsel of record copies of all documents shown to the deponent during the deposition. The copies shall be provided, at examining counsel's option, either before the deposition begins or contemporaneously with the showing of each document to the deponent.

RULE NO. 10 - EFFECT ON RULES OF EVIDENCE & PRIVILEGE; VIOLATIONS

A. Rules Not Intended to Change Any Rule of Evidence or Privilege

Nothing in Rules 1 through 9 is intended to, or does, change or affect any rule of evidence or privilege.

B. Violations

A violation of any of the provisions of Rules 1 through 9 should be promptly brought to the attention of the Court. In the first instance, the parties should attempt to resolve violations without the Court. In the second instance, the parties may call the Court and seek a ruling during the deposition as long as the Court and a court reporter are available. If a prompt telephone resolution is not available, the parties should file a written motion to resolve the potential violation. A violation of these rules may result in appropriate sanctions. Nothing in these Rules is intended to, or does, restrict the sanctions that might be imposed.

ENTER:

Judge Ruben Castillo
United States District Court

June 19, 2002