

MEMORANDUM FROM THE SUPREME JUDICIAL COURT  
STANDING ADVISORY COMMITTEE  
ON THE MASSACHUSETTS RULES OF CIVIL PROCEDURE  
REGARDING PROPOSED AMENDMENTS TO RULE 30 AND  
PROPOSED REPEAL OF RULE 30A

*OCTOBER 2020*

This memorandum explains proposed amendments to Mass. R. Civ. P. 30 (“Depositions Upon Oral Examinations”) and 30A (“Audiovisual Depositions and Audiovisual Evidence”). The impetus for these proposed amendments was to streamline and modernize the rules. Given the prevalence of audiovisual depositions in current practice, we believe it is anachronistic to maintain one rule for depositions recorded solely by stenographic means and another for depositions also recorded by audiovisual means. Accordingly, the proposed amendments to existing Rules 30 and 30A are reflected in the accompanying Proposed Rule 30, which combines the two rules into a single rule.

Rule 30A is proposed to be repealed, though guidance from prior caselaw and the Reporter’s Notes regarding Rule 30A may, where appropriate, still apply. To that end, we propose to add the existing Rule 30A Reporter’s Notes to the Reporter’s Notes for this revised Rule 30.

Proposed Rule 30 follows the structure of Fed. R. Civ. P. 30 (“Depositions by Oral Examination”), as the federal rule covers both stenographic and audiovisual depositions. In addition, Fed. R. Civ. P. 30 has been updated numerous times since its adoption in 1937, and is

generally more clear and concise than its Massachusetts counterpart. Except where noted we have preserved the existing substantive differences between the Massachusetts rules and the federal rule.

Proposed Rules 30(h)-(n) contain the provisions of existing Mass. R. Civ. P. 30A(g)-(m), with the changes described below. Sections (g)-(m) of Rule 30A relate to how audiovisual depositions may be used at trial. While these rules might more logically be placed in Rule 32 (“Use of Depositions in Court Proceedings”), moving these provisions to Rule 32 would necessitate a broader rethinking of the structure of Rule 32, so we have maintained them in Rule 30 with suggested streamlining edits only.

Proposed Rule 30(a): When a Deposition May Be Taken. Proposed Rule 30(a) follows the structure of Fed. R. Civ. P. 30(a), though preserves, with certain modifications, provisions unique to Massachusetts practice.

Proposed Rule 30(a)(2)(A)(ii) substantially simplifies the description of the applicable requirements when a party seeks to take a deposition within thirty days after service of a summons and complaint, but the witness plans to travel during that period. Existing Rule 30(b)(2) requires a certification that the witness “is about to go out of the country where the action is pending and more than 100 miles from the place of trial, or is about to go out of the United States, or is bound on a voyage abroad.” The proposed rule requires a certification that “before the 30-day period following service has expired, the deponent is expected to leave the Commonwealth and be unavailable thereafter.”

Except in cases where the plaintiff seeks primarily equitable or declaratory relief, Proposed Rule 30(a)(2)(B) requires leave of court if there is no reasonable likelihood that recovery in the matter will exceed \$7,000, as opposed to the \$5,000 floor in the current

Massachusetts rule. \$7,000 is the current jurisdictional ceiling for small claims matters under G.L. c. 218, § 21. No discovery is permitted in small claims matters except for good cause shown. Uniform Small Claims Rule 5.

The Proposed Rule eliminates two provisions in existing Rule 30(a) which are no longer necessary. It eliminates the requirement for leave of court for depositions where the action is pending in Superior Court following a trial in District Court. Since 2004, parties dissatisfied with a judgment in the District Court can no longer seek a new trial in Superior Court. G.L. c. 218, § 19B. The Proposed Rule also eliminates Rule 30(a)(v), requiring leave of court for a deposition in certain domestic relations matters. The Massachusetts Rules of Domestic Relations Procedure now provide the procedures in such cases.

We propose, though do not yet endorse, adding Rule 30(a)(2)(C), requiring a stipulation of the parties or leave of court if “the deposition would result in more than ten total depositions being taken by the plaintiffs, or by the defendants, or by the third-party defendants, or by any group of parties which share a common interest in the litigation.” This mirrors the provision of Fed. R. Civ. P. 30(a)(2)(A)(i), as well as Local Rule 26.1(c) of the United States District Court for the District of Massachusetts, and if adopted would both protect against unduly burdensome discovery and encourage counsel to develop an efficient and cost-effective discovery plan at the outset of the case. This limit on the number of depositions absent court approval would be consistent with Rule 26(c), which provides a mechanism to protect parties from unduly expensive or burdensome discovery efforts.

Proposed Rule 30(b): Notice of the Deposition; Other Formal Requirements. Proposed Rule 30(b) is modeled after Fed. R. Civ. P. 30(b), though like Proposed Rule 30(a) it preserves certain requirements in existing Massachusetts practice not present in the federal rule. These

include the requirement for seven days written notice before taking a deposition in existing Rule 30(b)(1), the provision that if a party served with a deposition notice under existing Rule 30(b)(2) within thirty days of the service of the summons and complaint is unable to retain counsel to represent it at the deposition, then the deposition may not be used against that party; the provision in existing Rule 30(b)(4) that a “stenographic record” of the deposition will be prepared even if the deposition is recorded by audiovisual means, unless the parties otherwise stipulate; and the provision in existing Rule 30(b)(5) that a request under Rule 34 to a party deponent to bring documents to the deposition shall be made with at least thirty days’ notice unless otherwise ordered by the court.

Proposed Rule 30(b)(3)(A) adds a requirement that if the notice of the deposition indicates that it will be recorded by audiovisual means, it will also indicate if the operator of the audiovisual equipment is an employee of the noticing attorney.

Proposed Rule 30(c): Examination and Cross-Examination; Record of the Examination; Objections; Written Questions. The existing rule has been simplified to more closely follow the federal rule and to eliminate redundancy with Proposed Rule 30(b).

Proposed Rule 30(d): Duration; Sanction; Motion to Terminate or Limit. Proposed Rule 30(d) contains two new provisions adopted from the federal rules. First, we propose, though do not yet endorse, Proposed Rule 30(d)(1), which provides that a deposition is limited to one day of seven hours, exclusive of reasonable breaks. The proposed rule also provides that the court *must* allow additional time if necessary for a fair examination of the witness, or if any circumstance, including conduct by the witness or counsel, impedes or delays the deposition. The parties may agree to extend the time, but in the absence of agreement a court order is required. Factors justifying a deposition longer than the presumptive seven-hour limit include,

but are not limited to, whether the witness has discoverable information regarding a matter of unusual factual complexity, whether the examination will involve numerous lengthy documents to be shown to the witness, or whether the deposition will explore unusually complex expert opinion. Parties are encouraged to make reasonable accommodations regarding the length of depositions to avoid resort to the court.

Proposed Rule 30(d)(2) also adds a provision enabling the court to impose appropriate sanctions, including reasonable expenses and attorneys' fees, on any person, including the deponent, who impedes, delays or frustrates the fair examination of the deponent. Sanctionable conduct may include frequent, inappropriate objections, coaching of the witness, refusal to agree on a reasonable apportionment of time among parties to examine a witness, or other inappropriate or unprofessional conduct. Sanctionable conduct may also include, as reflected in the 2001 Reporter's Notes to Rule 30(c), an instruction to a deponent not to answer, unless a privilege or some other legal protection against disclosure applies. As set forth in the comment to the analogous Federal rule, "counsel should not engage in any conduct during a deposition that would not be allowed in the presence of a judicial officer." Advisory Committee Notes, 1993 Amendment.

Proposed Rule 30(e): Review by the Witness; Changes. The Proposed Rule adopts the text of the federal rule.

Proposed Rule 30(f): Certification and Delivery; Exhibits; Copies of the Transcript or Recording; Filing. Proposed Rule 30(f) largely adopts the text of the analogous federal rule, though it eliminates the requirement that once the transcript is complete the officer must seal in an envelope and deliver a physical copy to the party taking the deposition. Given the multiple

ways to transmit the completed transcript electronically, the Proposed Rule simply requires “delivery.”

Proposed Rule 30(g): Failure to Attend or Serve a Subpoena; Expenses. The Proposed Rule adopts the text of the federal rule.

Proposed Rule 30(h) (formerly Rule 30A(g)): Rulings on objections; editing of recording. The existing rule has been simplified to eliminate redundancy.

Proposed Rule 30(i) (formerly Rule 30A(h)): Transcribing of audio portion; marking for identification. Text unchanged.

Proposed Rule 30(j) (formerly Rule 30A(i)): Use of audiovisual deposition and responsibility for assuring necessary equipment at time of use. Text unchanged.

Proposed Rule 30(k) (formerly Rule 30A(j)): Discrepancy between audiovisual recording and stenographic transcript. The existing rule has been simplified to eliminate redundancy.

Proposed Rule 30(l) (formerly Rule 30A(k)): Evidence by audiovisual recording. The existing rule has been simplified to eliminate redundancy and update cross-references.

Proposed Rule 30(m) (formerly Rule 30A(l)): Costs. Text unchanged.

Proposed Rule 30(n) (formerly Rule 30A(m)): Audiovisual depositions of treating physicians and expert witnesses for use at trial. The existing rule has been simplified to eliminate redundancy.