

**UNIFORM AUDI-VISUAL DEPOSITION
[ACT] [RULE]**

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

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WITH COMMENTS

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UNIFORM AUDIO-VISUAL DEPOSITION [ACT] [RULE]

Section

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Be it enacted . . .

§ 1. [Authorization of Audio-Visual Deposition].

(a) Any deposition may be recorded by audio-visual means without a stenographic record. Any party may make at his own expense a simultaneous stenographic or audio record of the deposition. Upon his request and at his own expense, any party is entitled to an audio or audio-visual copy of the audio-visual recording.

(b) The audio-visual recording is an official record of the deposition. A transcript prepared by an official court reporter is also an official record of the deposition.

[(c) On motion the court, for good cause, may order the party taking, or who took, a deposition by audio-visual recording to furnish, at his expense, a transcript of the deposition.]

COMMENT

Section 1(a) has its roots in Federal Rule 30(b)(4) which reads:

"The court may upon motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the order shall designate the manner of recording, preserving and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic

transcription made at his expense."

However, this [Act] [Rule] (1) does not require a court order for the taking of an audio-visual deposition; (2) sets out uniform standards for recording, preserving, filing, and using the depositions rather than leaving it to individual orders; and (3) specifically designates the audio-visual recording as an official record of the deposition.

The provisions for audio-visual depositions contained in this [Act] [Rule] supplement, and are in addition to, the general provisions applicable to the taking and use of depositions. Those general provisions remain in effect, except as they may be repealed or modified under Section 9 to eliminate inconsistency.

Subsection (b) provides that the audio-visual recording is an official record of the deposition. If a typewritten transcript is prepared by an official Court Reporter, it too is an official record of the deposition. Both can be used by the parties for briefing, argument, and appeal. In the event of conflict between the two records, the court would have to resolve the disparity, just as it might now, if the witness contended the stenographic transcription was inaccurate. Because the audio-visual recording is an exact recording, it would normally be relied upon to resolve any disparity; but, in rare circumstances, perhaps the stenographic transcription might be adopted by the court as a better recording.

Bracketed subsection (c) is available in those states where it is felt that the proponent of the deposition in certain circumstances should bear the expense of preparing a typewritten transcript. Because the added cost might well discourage the use of audio-visual depositions, the Special Committee felt that "good cause" should be shown to impose the cost on the proponent. The court can order the transcription to be made either by simultaneous stenographic recording or preparation of the transcript from the audio track of the videotape or from the audio cassette.

In many states, the bracketed provision may be considered unnecessary or counterproductive. Inasmuch as litigation is expensive, many forego judicial resolution of disputes. Omission of bracketed subsection (c) would minimize this problem compelling the party wanting the transcript to weigh the anticipated benefit against the cost to his client.

§ 2. [Use].

An audio-visual deposition may be used for any purpose and under any circumstances in which a stenographic deposition may be used.

COMMENT

This [Act] [Rule] does not expand the use of depositions; however, as is true with other depositions, the parties may wish to stipulate the use of an audio-visual deposition in a situation

where its use is not authorized hereby. In such an event, an audio-visual recording is superior to the reading of a stenographic deposition, because it provides an exact visual and audio recording of the testimony. It has many of the attributes of live testimony and will be advantageous for taking of medical and other expert testimony where both delay and cost may be minimized substantially by an audio-visual recording.

§ 3. [Notice].

The notice for taking an audio-visual deposition and the subpoena for attendance at that deposition must state that the deposition will be recorded by audio-visual means.

§ 4. [Procedure].

The following procedure must be observed in recording an audio-visual deposition:

(1) (Opening of Deposition.) The deposition must begin with an oral or written statement on camera which includes:

- (i) The operator's name and business address;
- (ii) The name and business address of the operator's employer;
- (iii) The date, time, and place of the deposition;
- (iv) The caption of the case;
- (v) The name of the witness;
- (vi) The party on whose behalf the deposition is being taken; and
- (vii) Any stipulations by the parties.

(2) (Counsel.) Counsel shall identify themselves on camera.

(3) (Oath.) The oath must be administered to the witness on camera.

(4) (Multiple Units.) If the length of a deposition requires the use of more than one recording unit, the end of each unit and the beginning of each succeeding unit must be announced on camera.

(5) (Closing of Deposition.) At the conclusion of a deposition, a statement must be made on camera that the deposition is concluded. A statement may be made on camera setting forth any stipulations made by counsel concerning the custody of the audio-visual recording and exhibits or other pertinent matters.

(6) (Index.) Depositions must be indexed by a time generator or other method specified pursuant to Section 6.

(7) (Objections.) An objection must be made as in the case of stenographic depositions.

(8) (Editing.) If the court issues an editing order, the original audio-visual recording must not be altered.

(9) (Filing.) Unless otherwise stipulated by the parties, the original audio-visual recording of a deposition, any copy edited pursuant to an order of the court, and exhibits must be filed forthwith with the clerk of the court.

COMMENT

A general guide of appropriate procedures is necessary and desirable to assure integrity of the recording and uniformity in procedures facilitating inter-and intra-state use of depositions.

However, provisions have been made for improved technology. For example, "audio-visual" recording is used rather than "videotape" because disc and other methods of recording may soon develop.

In paragraph (6), indexing is by "time generator or other method specified pursuant to Section 6" in anticipation that yet better techniques for indexing may be developed. The rules promulgated under Section 6 would specify the kind of time generator and the information (date, hour, minute, section, etc.) required, depending upon the evolving state of the art.

Paragraph (7) provides that objections will be handled in the same manner as for stenographic depositions. However, the Special Committee anticipates that, for ease of editing of objections and testimony ordered to be struck, the parties may frequently wish to stipulate that objections may be made immediately after the answer.

The [Act] [Rule] does not set out alternative methods of editing because improving technology may develop better techniques than those presently employed. Various techniques are currently used for editing, including (1) preparation of an edited copy omitting testimony that has been struck and (2) suppressing the audio, or audio-visual, display of any portion of the testimony struck. The integrity of the recording, regardless of the editing technique employed, requires that the original recording remain unaltered and thus paragraph (8) so provides.

No provisions are included for retention and storage of the recording by the clerk of court or its return at the conclusion of the proceedings. Local rules can best make provision for those matters. If the clerk of court has display equipment that cannot erase, free accessibility under his supervision would be appropriate. If not, controls should be developed by local rule or court order to preserve the integrity of the recording from inadvertent, or intentional, erasing or destruction of the recording. The videotape itself is reusable and normally should be returned to the party supplying it when the case is concluded.

§ 5. [Costs].

The reasonable expense of recording, editing, and using an audio-visual deposition may be taxed as costs.

COMMENT

It is anticipated that the total cost of employing an audio-visual deposition will be comparable to that of stenographic depositions and thus should be taxed in the same manner.

§ 6. [Standards].

[The [Supreme Court, Court Administrator, Clerk] may promulgate rules establishing standards for audio-visual equipment and guidelines for taking and using audio-visual depositions.] Incompatible audio-visual recordings must be conformed to the standards at the expense of the proponent. Both recordings are originals.

COMMENT

The purpose of the brackets is to provide flexibility to each state as to the means by which they will standardize the equipment and promulgate guidelines for its use. If state adoption is by court rule, the court should include in its rule standards for equipment and guidelines for its use or delegate that responsibility. If state adoption is by legislative enactment,

the [Act] [Rule] should authorize the appropriate agency or official to establish state-wide standards and guidelines.

Many depositions will be taken in other states or other political subdivisions of the state. Uniformity thus is very important. Equipment standardization also needs to be compatible with display equipment used or available to the court. Uniformity in taking and using the recording will avoid problems in its use by various jurisdictions that otherwise might consider non-uniform techniques or procedures improper. The court or appropriate agency should coordinate its standards with other states by adopting in substance the standards and guidelines promulgated by the Federal Judicial Center, or other similar uniform standards.

§ 7. [Uniformity of Application and Construction].

This [Act] [Rule] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] [Rule] among states enacting it.

§ 8. [Short Title].

This [Act] [Rule] may be cited as the "Uniform Audio-Visual Deposition [Act] [Rule]".

§ 9. [Time of Taking Effect].

This [Act] [Rule] shall take effect . . .

[§ 10. [Repeal].

The following acts and parts of acts are repealed:]

COMMENT

If state adoption is by court rule, the section is not necessary.