

Rule 28. Persons Before Whom Depositions May Be Taken

(a) WITHIN THE UNITED STATES.

(1) *In General.* Within the United States or a territory or insular possession subject to United States jurisdiction, a deposition must be taken before:

(A) an officer authorized to administer oaths either by federal law or by the law in the place of examination; or

(B) a person appointed by the court to administer oaths and take testimony.

(2) *Definition of "Officer."* The term "officer" in Rules 30, 31 and 32 includes a person appointed by the court under this rule or designated by the parties under Rule 29(a).

(b) IN A FOREIGN COUNTRY.

(1) *In General.* A deposition may be taken in a foreign country:

(A) under an applicable treaty or convention;

(B) under a letter of request, whether or not captioned a "letter rogatory";

(C) on notice, before a person authorized to administer oaths either by federal law or by the law in the place of examination; or

(D) before a person commissioned by the court to administer any necessary oath and take testimony.

(2) *Issuing a Letter of Request or a Commission.* A letter of request, a commission, or both may be issued:

(A) on appropriate terms after an application and notice of it; and

(B) without a showing that taking the deposition in another manner is impracticable or inconvenient.

(3) *Form of a Request, Notice, or Commission.* When a letter of request or any other device is used according to a treaty or convention, it must be captioned in the form prescribed by that treaty or convention. A letter of request may be addressed "To the Appropriate Authority in [name of country]." A deposition notice or a commission must designate by name or descriptive title the person before whom the deposition is to be taken.

(4) *Letter of Request—Admitting Evidence.* Evidence obtained in response to a letter of request need not be excluded merely because:

(A) it is not a verbatim transcript;

(B) the testimony was not taken under oath; or

(C) any similar departure from the requirements for depositions taken within the United States.

(c) **DISQUALIFICATION.** A deposition must not be taken before a person who is:

(1) any party's relative, employee, or attorney;

(2) related to or employed by any party's attorney; or

(3) financially interested in the action.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 28*, as amended in 2007, except that 1) the phrase "in which the action is pending" is still omitted; and 2) subsection (b)(4) and section (c) are divided into further subsections.

COMMENT

Rule 28 is identical to *Federal Rule of Civil Procedure 28* except for deletion from paragraph (a) of the superfluous Court designation "in which the action is pending."