

COUNCIL ON COURT PROCEDURES

DRAFT HISTORY

OF ORCP 39

2011-2013 BIENNIUM

1 **DEPOSITIONS UPON ORAL EXAMINATION**

2 **RULE 39**

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4 **C Notice of examination.**

5 **C(1) General requirements.** A party desiring to take the deposition of any person upon oral  
6 examination shall give reasonable notice in writing to every other party to the action. The notice  
7 shall state the time and place for taking the deposition and the name and address of each person to  
8 be examined, if known, and, if the name is not known, a general description sufficient to identify  
9 such person or the particular class or group to which such person belongs. If a subpoena duces  
10 tecum is to be served on the person to be examined, the designation of the materials to be  
11 produced as set forth in the subpoena shall be attached to or included in the notice.

12 **C(2) Special notice.** Leave of court is not required for the taking of a deposition by plaintiff if  
13 the notice (a) states that the person to be examined is about to go out of the state, or is bound on a  
14 voyage to sea, and will be unavailable for examination unless the deposition is taken before the  
15 expiration of the period of time specified in Rule 7 to appear and answer after service of summons  
16 on any defendant, and (b) sets forth facts to support the statement. The plaintiff’s attorney shall  
17 sign the notice, and such signature constitutes a certification by the attorney that to the best of such  
18 attorney’s knowledge, information, and belief the statement and supporting facts are true.

19 If a party shows that when served with notice under this subsection, the party was unable  
20 through the exercise of diligence to obtain counsel to represent such party at the taking of the  
21 deposition, the deposition may not be used against such party.

22 **C(3) Shorter or longer time.** The court may for cause shown enlarge or shorten the time for  
23 taking the deposition.

24 **C(4) Non-stenographic recording.** The notice of deposition required under subsection (1) of  
25 this section may provide that the testimony **will** be recorded by other than stenographic means, in  
26 which event the notice shall designate the manner of recording and preserving the deposition. A

1 | court may require that the deposition be taken by stenographic means if necessary to assure that  
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3 |       **C(5) Production of documents and things.** The notice to a party deponent may be  
4 | accompanied by a request made in compliance with Rule 43 for the production of documents and  
5 | tangible things at the taking of the deposition. The procedures of Rule 43 shall apply to the request.

6 |       **C(6) Deposition of organization.** A party may in the notice and in a subpoena name as the  
7 | deponent a public or private corporation or a partnership or association or governmental agency  
8 | and describe with reasonable particularity the matters on which examination is requested. In that  
9 | event, the organization so named shall **provide notice of no fewer than three (3) days before the**  
10 | **scheduled deposition, absent good cause or agreement of the parties and the deponent,**  
11 | *[designate] designating the name(s) of* one or more officers, directors, managing agents, or other  
12 | persons who consent to testify on its behalf[,] and *[shall set] setting* forth, for each person  
13 | designated, the matters on which such person will testify. A subpoena shall advise a nonparty  
14 | organization of its duty to make such a designation. The persons so designated shall testify as to  
15 | matters known or reasonably available to the organization. This subsection does not preclude taking  
16 | a deposition by any other procedure authorized in these rules.

17 |       **C(7) Deposition by telephone.** Parties may agree by stipulation or the court may order that  
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19 | pursuant to court order, the order shall designate the conditions of taking testimony, the manner of  
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21 | will be accurate and trustworthy. If testimony at a deposition is taken by telephone other than  
22 | pursuant to court order or stipulation made a part of the record, then objections as to the taking of  
23 | testimony by telephone, the manner of giving the oath or affirmation, and the manner of recording  
24 | the deposition are waived unless seasonable objection thereto is made at the taking of the  
25 | deposition. The oath or affirmation may be administered to the deponent, either in the presence of  
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1 | the person administering the oath or over the telephone, at the election of the party taking the  
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1                                   **DEPOSITIONS UPON ORAL EXAMINATION**

2                                   **RULE 39 - VERSION A**

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6 oral examination shall give reasonable notice in writing to every other party to the action. The  
7 notice shall state the time and place for taking the deposition and the name and address of  
8 each person to be examined, if known, and, if the name is not known, a general description  
9 sufficient to identify such person or the particular class or group to which such person belongs.  
10 If a subpoena duces tecum is to be served on the person to be examined, the designation of the  
11 materials to be produced as set forth in the subpoena shall be attached to or included in the  
12 notice.

13                   **C(2) Special notice.** Leave of court is not required for the taking of a deposition by  
14 plaintiff if the notice (a) states that the person to be examined is about to go out of the state, or  
15 is bound on a voyage to sea, and will be unavailable for examination unless the deposition is  
16 taken before the expiration of the period of time specified in Rule 7 to appear and answer after  
17 service of summons on any defendant, and (b) sets forth facts to support the statement. The  
18 plaintiff's attorney shall sign the notice, and such signature constitutes a certification by the  
19 attorney that to the best of such attorney's knowledge, information, and belief the statement  
20 and supporting facts are true.

21                   If a party shows that when served with notice under this subsection, the party was  
22 unable through the exercise of diligence to obtain counsel to represent such party at the taking  
23 of the deposition, the deposition may not be used against such party.

24                   **C(3) Shorter or longer time.** The court may for cause shown enlarge or shorten the time  
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5 necessary to assure that the recording be accurate.

6           **C(5) Production of documents and things.** The notice to a party deponent may be  
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12 agency and describe with reasonable particularity the matters on which examination is  
13 requested. In that event, the organization so named shall **provide notice of no fewer than**  
14 **twenty-four (24) hours before the scheduled deposition, absent good cause or agreement of**  
15 **the parties and the deponent, [designate] designating the name(s) of** one or more officers,  
16 directors, managing agents, or other persons who consent to testify on its behalf[,] and [*shall*  
17 *set*] **setting** forth, for each person designated, the matters on which such person will testify. A  
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1                                   **DEPOSITIONS UPON ORAL EXAMINATION**

2                                   **RULE 39 - VERSION B**

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4                   **C Notice of examination.**

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12                   **C(2) Special notice.** Leave of court is not required for the taking of a deposition by plaintiff if  
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6 |       **C(6) Deposition of organization.** A party may in the notice and in a subpoena name as the  
7 | deponent a public or private corporation or a partnership or association or governmental agency  
8 | and describe with reasonable particularity the matters on which examination is requested. In that  
9 | event, the organization so named shall provide reasonable advance notice of no fewer than three  
10 | (3) days before the scheduled deposition, absent good cause or agreement of the parties and the  
11 | deponent, [designate] designating the name(s) of one or more officers, directors, managing agents,  
12 | or other persons who consent to testify on its behalf, and [shall set] setting forth, for each person  
13 | designated, the matters on which such person will testify. A subpoena shall advise a nonparty  
14 | organization of its duty to make such a designation. The persons so designated shall testify as to  
15 | matters known or reasonably available to the organization. This subsection does not preclude taking  
16 | a deposition by any other procedure authorized in these rules.

17 |       **C(7) Deposition by telephone.** Parties may agree by stipulation or the court may order that  
18 | testimony at a deposition be taken by telephone. If testimony at a deposition is taken by telephone  
19 | pursuant to court order, the order shall designate the conditions of taking testimony, the manner of  
20 | recording the deposition, and may include other provisions to assure that the recorded testimony  
21 | will be accurate and trustworthy. If testimony at a deposition is taken by telephone other than  
22 | pursuant to court order or stipulation made a part of the record, then objections as to the taking of  
23 | testimony by telephone, the manner of giving the oath or affirmation, and the manner of recording  
24 | the deposition are waived unless seasonable objection thereto is made at the taking of the  
25 | deposition. The oath or affirmation may be administered to the deponent, either in the presence of  
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1 | the person administering the oath or over the telephone, at the election of the party taking the  
2 | deposition.

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1 **DEPOSITIONS UPON ORAL EXAMINATION**

2 **RULE 39**

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4 **C Notice of examination.**

5 **C(1) General requirements.** A party desiring to take the deposition of any person upon oral  
6 examination shall give reasonable notice in writing to every other party to the action. The notice  
7 shall state the time and place for taking the deposition and the name and address of each person to  
8 be examined, if known, and, if the name is not known, a general description sufficient to identify  
9 such person or the particular class or group to which such person belongs. If a subpoena duces  
10 tecum is to be served on the person to be examined, the designation of the materials to be  
11 produced as set forth in the subpoena shall be attached to or included in the notice.

12 **C(2) Special notice.** Leave of court is not required for the taking of a deposition by plaintiff if  
13 the notice (a) states that the person to be examined is about to go out of the state, or is bound on a  
14 voyage to sea, and will be unavailable for examination unless the deposition is taken before the  
15 expiration of the period of time specified in Rule 7 to appear and answer after service of summons  
16 on any defendant, and (b) sets forth facts to support the statement. The plaintiff's attorney shall  
17 sign the notice, and such signature constitutes a certification by the attorney that to the best of such  
18 attorney's knowledge, information, and belief the statement and supporting facts are true.

19 If a party shows that when served with notice under this subsection, the party was unable  
20 through the exercise of diligence to obtain counsel to represent such party at the taking of the  
21 deposition, the deposition may not be used against such party.

22 **C(3) Shorter or longer time.** The court may for cause shown enlarge or shorten the time for  
23 taking the deposition.

24 **C(4) Non-stenographic recording.** The notice of deposition required under subsection (1) of  
25 this section may provide that the testimony be recorded by other than stenographic means, in  
26 which event the notice shall designate the manner of recording and preserving the deposition. A

1 | court may require that the deposition be taken by stenographic means if necessary to assure that  
2 | the recording be accurate.

3 |       **C(5) Production of documents and things.** The notice to a party deponent may be  
4 | accompanied by a request made in compliance with Rule 43 for the production of documents and  
5 | tangible things at the taking of the deposition. The procedure of Rule 43 shall apply to the request.

6 |       **C(6) Deposition of organization.** A party may in the notice and in a subpoena name as the  
7 | deponent a public or private corporation or a partnership or association or governmental agency  
8 | and describe with reasonable particularity the matters on which examination is requested. In that  
9 | event, the organization so named shall provide reasonable advance notice of no less than  
10 | twenty-four (24) hours before the scheduled deposition, absent good cause or agreement of the  
11 | parties and the deponent, [designate] designating one or more officers, directors, managing  
12 | agents, or other persons who consent to testify on its behalf, and [*shall set*] setting forth, for each  
13 | person designated, the matters on which such person will testify. A subpoena shall advise a  
14 | nonparty organization of its duty to make such a designation. The persons so designated shall testify  
15 | as to matters known or reasonably available to the organization. This subsection does not preclude  
16 | taking a deposition by any other procedure authorized in these rules.

17 |       **C(7) Deposition by telephone.** Parties may agree by stipulation or the court may order that  
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