

Rule 4017.1. [Videotape] Video Depositions

(a) Any deposition [taken] upon oral examination may be [recorded by videotape.] taken as a matter of course as a video deposition by means of simultaneous audio and visual electronic recording. Except as provided by this rule, the rules of this chapter governing the practice and procedure in depositions and discovery shall apply.

(1) Any party may have a [videotape] video deposition recorded simultaneously by stenographic means as provided by this chapter.

(2) A [videotape] video deposition may be used in court only if accompanied by a transcript of the deposition.

(b) Every notice or subpoena for the taking of a [videotape] video deposition shall state

(1) that [it] the deposition is to be taken as a [videotaped] video deposition,

(2) the name and address of the person whose deposition is to be taken,

(3) the name and address of the officer before whom it is to be taken,

(4) whether the deposition is to be simultaneously recorded by stenographic means, and

(5) the name and address of the [videotape] video operator and of his or her employer. The operator may be an employee of the attorney taking the deposition.

(c) The deposition shall begin by the operator stating on camera (1) his or her name and address, (2) the name and address of his or her employer, (3) the date, time and place of the deposition, (4) the caption of the case, (5) the name of the witness, and (6) the party on whose behalf the deposition is being taken. The officer before whom the deposition is taken shall then identify himself or herself and swear the witness on

camera. At the conclusion of the deposition the operator shall state on camera that the deposition is concluded. When the length of the deposition requires the use of more than one [tape] videotape, the end of the [tape] videotape and the beginning of each succeeding [tape] videotape shall be announced on camera by the operator.

(d) The deposition shall be timed by a digital clock on camera which shall show continually each hour, minute and second of each [tape] videotape of the deposition.

(e) No signature of the witness shall be required.

(f) The attorney for the party taking the deposition shall take custody of and be responsible for the safeguarding of the videotape and shall permit the viewing of and shall provide a copy of the videotape or the audio portion thereof upon the request and at the cost of a party.

(g) In addition to the uses permitted by Rule 4020 a [videotape] video deposition of a medical witness or any witness called as an expert, other than a party, may be used at trial for any purpose whether or not the witness is available to testify.

(h) At a trial or hearing that part of the audio portion of a [videotape] video deposition which is offered in evidence and admitted, or which is excluded on objection, shall be transcribed in the same manner as the testimony of other witnesses. The videotape shall be marked as an exhibit and may remain in the custody of the court.

Note: Local rules and practice shall regulate the procedure for handling objections to questions and answers on the [tape] videotape. Suggested devices include inter alia, previewing by the judge and counsel and withholding from the evidence material to which objections are sustained; or having the operator turn off the audio portion of the [tape] videotape at the trial or hearing to

exclude objectionable material or the use of "fast forward" by the operator at the trial or hearing to eliminate both the image and the sound of the objectionable material.

(i) As used in this rule, "videotape" includes all media on which a video deposition may be recorded.

Explanatory Comment

Rule 4017.1 governing video depositions has been amended in two respects. First, the amendment allows a party to take video depositions as a matter of course. Although the present rule contains no limitation upon or prerequisite to the taking of a video deposition, some courts have imposed limitations citing the cost of the deposition and the burden to the party being deposed. See for example, *Tillett v. Shento*, 131 P.L.J. 297 (C.P. Allegheny 1982). However, technological advances have lowered the cost of a video deposition and either reduced or eliminated the burden to the parties.

There has been a noted lack of civility of parties, deponents and attorneys in connection with depositions upon oral examination. There also occurs the abusive practice of attorneys who raise objections which suggest an answer to the deponent or who instruct the deponent not to answer a question without reasonable basis. The ability of a party to use video depositions as a matter of course may have the salutary effect of discouraging egregious conduct during depositions.

Second, advancements in technology have provided new methods of video recording an oral deposition in addition to videotaping. The terminology of the rule has been changed to reflect those advancements.

By the Civil Procedural
Rules Committee

R. Stanton Wettick, Jr.
Chair