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7 **IN THE SUPREME COURT**
8 **STATE OF ARIZONA**

9 In the Matter of:

Supreme Court No. R-22-

10 **PETITION TO AMEND RULES**
11 **30(b) AND 32 (d) OF THE**
12 **ARIZONA RULES OF CIVIL**
13 **PROCEDURE**

PETITION

14 Pursuant to Rule 28(a) of the Arizona Rules of Supreme Court, the State Bar
15 of Arizona (the "State Bar") hereby petitions the Court to amend Arizona Rules of
16 Civil Procedure (the "Ariz. R. Civ. P.") 30(b) and 32(d).

17 Ariz. R. Civ. P. 30 and 32 govern the methods for taking depositions by oral
18 examination and the use of such deposition testimony in court proceedings. The
19 proposed amendments to Ariz. R. Civ. P. 30(b) and 32(d) adopt changes to clarify
20 the notice attorneys must provide and procedures attorneys must follow to video
21 record depositions. The attached Appendix A contains a copy of Rules 30 and 32
22 showing all the proposed changes to each rule. A clean version of each rule,
23 incorporating the proposed changes, is attached at Appendix B.
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1 **I. BACKGROUND**

2 With the popularity of cellular phones, tablets, and other devices with the
3 capability of capturing video recordings, members of the Civil Bench and the Bar
4 have raised concerns regarding the type of notice necessary to record depositions
5 using such devices, the potential manipulation of video recordings, the placement
6 of the video recording device, and the use of such recording in court proceedings.
7

8 Rule 30(b)(3)(B) currently requires that “the party who notices the
9 deposition must state in the notice the method for recording the testimony.” Rule
10 30(b)(3)(D) requires that “[a]ny notice of recording the testimony by audiovisual
11 means must identify the placement of the camera(s).”
12

13 The State Bar’s Civil Practice and Procedure Committee (the “Committee”)
14 created a subcommittee, which discussed the appropriate notice and procedures
15 when depositions are recorded by audio visual means. The subcommittee met with
16 the President and Executive Director of the Arizona Court Reporter’s Association
17 and a certified videographer to discuss the issues that arise when attorneys capture
18 video recordings on cell phones, tablets, or by other methods.
19

20 Accordingly, the State Bar believes that Ariz. R. Civ. P. 30(b) and 32(d)
21 should be amended to clarify the notice and procedures attorneys must follow if they
22 intend to video record depositions.
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1 **II. THE PROPOSED AMENDMENTS TO RULES 30(b) AND 32(d)**

2 The State Bar's proposed amendments require the party intending to capture
3 video recordings of depositions provide notice to the other party of its intention,
4 the manner of audiovisual recording, and the person or company that will conduct
5 such recording. Such notice will provide other parties the opportunity to capture a
6 video recording of the deposition as well or to hire a videographer to do so. The
7 proposed amendments also require specific placement of the recording device.
8 The Committee believes this is necessary to avoid concerns related to the potential
9 distortion of the video testimony. For example, if the camera is placed too far from
10 the deponent, it has the effect of making the deponent look smaller and potentially
11 less persuasive.
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15 The proposed changes to 30(b)(3) combine 30(b)(3)(B) and 30(b)(3)(D) and
16 specify that, if the party noticing the deposition intends to video record the
17 deposition, the notice of deposition shall include the method and manner of
18 audiovisual recording and the person or company that will conduct such recording.
19 The proposed changes to 30(b)(5)(B) state the video recording device should
20 squarely face the witness and avoid depicting other persons.
21
22

23 The proposed change to 32(d) clarifies that a party does not waive its right
24 to object to the admissibility of a video recording, or any other means of recording,
25


1 of a deposition by failing to designate an alternative method of recording pursuant
2 to Rule 30(b)(3).

3
4 The State Bar's proposed amendments to Rules 30(b) and 32(d) are brief but
5 are important to provide adequate notice to allow the other parties either to agree
6 to the method of capturing such video recording and person or company doing so,
7 or to hire a videographer to video record the deposition. The proposed amendments
8 will also limit the amount to which video-taped deposition can be distorted by
9 placement of the camera.
10


11 **CONCLUSION**

12 For the foregoing reasons, the State Bar respectfully petitions this Court to
13 amend Ariz. R. Civ. P. 30(b) and 32(d) as set forth in the attached Appendices.
14

15 RESPECTFULLY SUBMITTED this 10th day of January, 2022.

16
17 
18 _____
19 Lisa M. Panahi
20 General Counsel

21 Electronic copy filed with the
22 Clerk of the Supreme Court of Arizona
23 this 10th day of January, 2022.

24 by: 
25 _____

Appendix A

Appendix A.1

Rule 30. Depositions by Oral Examination

(a) When a Deposition May Be Taken.

(1) *Depositions Permitted.* A party may depose: (A) any party; (B) any person disclosed as an expert witness under Rule 26.1(d)(1); (C) any treating physician in a medical malpractice action; and (D) any document custodian in order to secure production of documents and establish evidentiary foundation. Unless all parties agree or the court orders otherwise for good cause, a party may not depose any other person or depose a person who has already been deposed in the action.

(2) *Depositions by Plaintiff Earlier Than 30 Days After Serving the Summons and Complaint.* A plaintiff must obtain leave of court to take a deposition earlier than 30 days after serving the summons and complaint on any defendant unless: (A) a defendant has served a deposition notice or otherwise sought discovery under these rules; or (B) the plaintiff certifies in the deposition notice, with supporting facts, that the deponent is expected to leave Arizona and will be unavailable for deposition after expiration of the 30-day period. If a party shows that it was unable, despite diligent efforts, to obtain counsel to represent it at a deposition taken under this Rule 30(a)(2), the deposition may not be used against that party.

(3) *Incarcerated Deponents.* Subject to Rule 30(a)(1), a party may depose an incarcerated person only by agreement of the person's custodian or by leave of court on such terms as the court orders.

(4) *Compelling Attendance of Deponent.* A party may compel a nonparty deponent's attendance by serving a subpoena under Rule 45. A party noticing the deposition of a party--or an officer, director, or managing agent of a party--need not serve a subpoena under Rule 45.

(b) Notice of a Deposition; Method of Recording; Deposition by Remote Means; Deposition of an Entity; Other Formal Requirements.

(1) *Notice Generally.* Unless all parties agree or the court orders otherwise, a party who wants to depose a person by oral questions must serve written notice to every other party at least 10 days before the date of the deposition. The notice must state the date, time, and place of the deposition and, if known, the deponent's name and address. If the deponent's name is unknown, the notice must provide a general

description sufficient to identify the person or the particular class or group to which the person belongs.

(2) *Producing Materials.* If a subpoena for documents, electronically stored information, or tangible things has been or will be served on the deponent, the materials designated for production in the subpoena must be listed in the deposition notice or in an attachment to the notice. A deposition notice to a deponent who is a party to the action may be accompanied by a separate request under Rule 34 to produce documents, electronically stored information, or tangible things at the deposition. The procedures under Rule 34 apply to any such request.

(3) *Method of Recording.*

(A) Permitted Methods. Unless all parties agree or the court orders otherwise, testimony must be recorded by a certified reporter and may also be recorded by audio or audiovisual means.

(B) Method Stated in the Notice. The party who notices the deposition must state in the notice the method for recording the testimony. If the deposition will be recorded by audiovisual means, the notice must state the method and manner of audiovisual recording and the person or company that will conduct such recording. Unless the parties agree or the court orders otherwise, the noticing party bears the recording costs.

(C) Additional Method. With at least two days prior written notice to the deponent and other parties, any other party may designate another method for recording the testimony in addition to that specified in the original notice. Unless the parties agree or the court orders otherwise, that party bears the expense of the additional recording.

~~(D) Notice of Recording by Audiovisual Means. Any notice of recording the testimony by audiovisual means must identify the placement of the camera(s).~~

~~(E) Transcription.~~ Any party may request that the testimony be transcribed. If the testimony is transcribed, the party who originally noticed the deposition is responsible for the cost of the original transcript. Any other party may, at its expense, arrange to receive a certified copy of the transcript.

(4) *By Remote Means.* The parties may agree or the court may order that a deposition be taken by telephone or other remote means. For the purposes of this

rule and Rules 28(a), 37(a)(2), 45(b)(3)(B), and 45(e), the deposition takes place where the deponent answers the questions. If the deponent is not in the officer's physical presence, the officer may nonetheless place the deponent under oath or affirmation with the same force and effect as if the deponent was in the officer's physical presence.

(5) Officer's Duties.

(A) Before Deposition. Unless the parties agree otherwise under Rule 29, a deposition must be conducted before an officer appointed or designated under Rule 28. The officer must begin the deposition with a statement or notation on the record that includes:

- (i) the officer's name, certification number, if any, and business address;
- (ii) the date, time, and place of the deposition;
- (iii) the deponent's name;
- (iv) the officer's administration of the oath or affirmation to the deponent; and
- (v) the identity of all persons present.

(B) Conducting the Deposition; Avoiding Distortion. If the deposition is recorded by audio or audiovisual means, the officer must repeat the items in Rule 30(b)(5)(A)(i) through (iii) at the beginning of each unit of the recording medium. The deponent's and attorneys' appearance, voice, and demeanor must not be distorted through recording techniques. The camera should squarely face the witness and avoid depicting other persons.

(C) After the Deposition. At the end of the deposition, the officer must state or note on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other relevant matters.

(6) Notice or Subpoena Directed to an Entity. In its deposition notice or subpoena, a party may name as the deponent a public or private corporation, a limited liability company, a partnership, an association, a governmental agency, or other entity, and must then describe with reasonable particularity the matters for examination. The named entity must then designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf. If the entity designates more than one person to testify, it must set out the matters on which each designated person will testify. Each designated person must testify about information known

or reasonably available to the entity. This Rule 30(b)(6) does not preclude a deposition by any other procedure allowed by these rules.

(c) Examination and Cross-Examination; Record of the Examination; Objections; Conferences Between Deponent and Counsel; Written Questions.

(1) *Examination and Cross-Examination.* The examination and cross-examination of a deponent proceed as they would at trial under the Arizona Rules of Evidence, except for Rules 103 and 615. Any party not present within 30 minutes after the time specified in the notice of deposition waives any objection that the deposition was taken without its presence. After putting the deponent under oath or affirmation, the officer personally--or a person acting in the presence and under the direction of the officer--must record the testimony by the method(s) designated under Rule 30(b)(3).

(2) *Objections.* The officer must note on the record any objection made during the deposition--whether to evidence, to a party's, deponent's, or counsel's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition. An objection must be stated concisely, in a nonargumentative manner, and without suggesting an answer to the deponent. Unless requested by the person who asked the question, an objecting person must not specify the defect in the form of a question or answer. Counsel may instruct a deponent not to answer--or a deponent may refuse to answer--only when necessary to preserve a privilege, to enforce a limit ordered by the court, or to present a motion under Rule 30(d)(3). Otherwise, the deponent must answer, and the testimony is taken subject to any objection.

(3) *Conferences Between Deponent and Counsel.* The deponent and his or her counsel may not engage in continuous and unwarranted conferences off the record during the deposition. Unless necessary to preserve a privilege, the deponent and his or her counsel may not confer off the record while a question is pending.

(4) *Participating Through Written Questions.* Instead of participating in the oral examination, a party may serve written questions in a sealed envelope on the party who noticed the deposition, who must deliver them to the officer. The officer must ask the deponent those questions and record the answers verbatim.

(d) Duration; Sanctions; Motion to Terminate or Limit.

(1) *Duration.* Unless the parties agree or the court orders otherwise, a deposition is limited to 4 hours and must be completed in a single day.

Depositions of fact witnesses are further limited by the total amount of time permitted for fact witnesses by a case's tier assignment under Rule 26.2(f), which limit may not be extended except as provided in Rule 26.2(g) and (h).

Notwithstanding those limits, the court must allow additional time consistent with Rule 26(b)(1) and (2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

(2) *Sanctions.* The court may impose appropriate sanctions--including any order under Rule 16(h)--against a party or attorney who has engaged in unreasonable, groundless, abusive, or obstructionist conduct in connection with a deposition including an unreasonable refusal to agree to extend a deposition beyond 4 hours.

(3) *Motion to Terminate or Limit.*

(A) *Grounds.* At any time during a deposition, the deponent or a party may move to terminate or limit the deposition on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. The deponent or party must file the motion in the court where the action is pending or the court where the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(B) *Order.* The court may order that the deposition be terminated or that its scope and manner be limited as provided in Rule 26(c). If terminated, the deposition may be resumed only by order of the court where the action is pending.

(C) *Award of Expenses.* Rule 37(a)(5) applies to the award of expenses.

(e) Review by the Deponent; Changes.

(1) *Review; Statement of Changes.* If requested by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign and deliver to the officer a statement listing the changes and the reasons for making them.

(2) *Officer's Certificate to Attach Changes.* The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent made during the 30-day period.

(f) Officer's Certification and Delivery; Documents and Tangible Things; Copies of the Transcript or Recording.

(1) *Certification and Delivery.* The officer must certify in writing that the deponent was duly sworn by the officer and that the deposition accurately records the deponent's testimony. The certificate must accompany the record of the deposition. Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked "Deposition of [witness's name]" and must promptly deliver it to the attorney who arranged for the transcript or recording. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

(2) *Documents and Tangible Things.*

(A) *Originals and Copies.* Documents and tangible things produced for inspection during a deposition must, on a party's request, be marked for identification and attached to the deposition--and any party may inspect and copy them--but if the person who produced them wants to keep the originals, the person may:

- (i) offer copies to be marked, attached to the deposition, and then used as originals--after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or
- (ii) give all parties a fair opportunity to inspect and copy the originals after they are marked--in which event the originals may be used as if attached to the deposition.

(B) *Order Regarding the Originals.* On motion, the court may order that the originals be attached to the deposition until final disposition of the action.

(3) *Copies of the Transcript or Recording.* Unless the parties agree or the court orders otherwise, the officer must retain the record of a deposition according to the applicable records retention and disposition schedules adopted by the Supreme Court. Upon payment of a reasonable charge, the officer must provide a copy of the transcript or recording to any party or to the deponent.

(g) Failure to Attend a Deposition or Serve a Subpoena; Expenses. A party who attends a noticed deposition in person or by an attorney may recover reasonable expenses for attending, including attorney's fees, if the noticing party failed to:

(1) attend and proceed with the deposition; or

(2) serve a subpoena on a nonparty deponent, who did not attend as a result of the lack of service.

Appendix A.2

Rule 32. Using Depositions in Court Proceedings

(a) Using Depositions.

(1) *In the Same or Similar Action.* At a hearing or trial, all or part of a deposition taken in the action--or in another federal or state court action involving the same subject matter between the same parties, or their representatives or predecessors in interest--may be used against a party if:

(A) the deposition testimony would be admissible under the Arizona Rules of Evidence if the deponent were present and testifying;

(B) the party or its predecessor in interest was present or represented at the deposition or had reasonable notice of it; and

(C) the party, its representative, or its predecessor in interest had an opportunity and similar motive to develop the testimony by examination at the deposition.

(2) *In a Different Action.* At a hearing or trial, all or part of a deposition taken in another federal or state court action may be used as allowed by the Arizona Rules of Evidence.

(3) *Deponent's Availability at Trial.* Subject to Rule 32(a)(1) and (2), all or part of a deposition may be used at trial regardless of the deponent's availability to testify at trial. Use of a deposition at trial does not limit, in any way, any party's right to call the deponent to testify in person.

(4) *Using Part of a Deposition.* If a party offers in evidence only part of a deposition, the court may require that party to introduce contemporaneously other parts that in fairness should be considered with the part offered.

(5) *Substituted Party.* Substituting a party under Rule 25 does not affect the right to use a previously taken deposition.

(b) Objections to Admissibility. Subject to Rules 28(b) and (c), and 32(d)(3), an objection may be made at a hearing or trial to the admission of any deposition testimony that would be inadmissible if the witness were present and testifying.

(c) Form of Presentation. Unless the court orders otherwise, a party must provide a transcript of any deposition testimony the party offers, but also may provide the court with the testimony in nontranscript form. On any party's request, deposition testimony offered in a jury trial for any purpose other than impeachment must be presented in nontranscript form, if available, unless the court orders otherwise for good cause. If the testimony is unavailable in audio or audiovisual form, the court may require a single presenter to read the designated parts of the deposition testimony to the jury.

(d) Preservation and Waiver of Objections.

(1) *To the Notice.* A party objecting to an error or irregularity in a deposition notice must promptly serve the objection in writing on the party giving the notice.

(2) *To the Officer's Qualification.* A party objecting to the qualification of the officer before whom a deposition is to be taken must make such objection:

(A) before the deposition begins; or

(B) promptly after the basis for disqualification becomes known or, with reasonable diligence, could have been known.

(3) *To the Method of Recording Deposition.* The failure to designate an alternate method of recording pursuant to Rule 30(b)(3) does not waive any party's right to object to the admissibility or use of any recording made by any designated method.

~~(34)~~ *To the Taking of the Deposition.*

(A) *To Competence, Relevance, or Materiality.* A party objecting to a deponent's competence--or to the competence, relevance, or materiality of testimony--must make the objection before or during the deposition if the ground for the objection could have been corrected at that time.

(B) *To an Error or Irregularity at an Oral Deposition.* A party objecting to the manner of taking the deposition, the form of a question or answer, the oath or affirmation, a party's conduct, or other matters that could be corrected at that time must timely make the objection during the deposition.

(C) *To a Written Question.* A party objecting to the form of a written question under Rule 31 must serve the objection under Rule 31(b)(3).

(45) *To the Officer's Completion and Return of Deposition.* A party objecting to how the officer (A) transcribed the testimony, or (B) prepared, signed, certified, sealed, endorsed, delivered, or otherwise dealt with the deposition, must file a motion to suppress promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known.

Appendix B

Appendix B.1

Rule 30. Depositions by Oral Examination

(a) When a Deposition May Be Taken.

(1) *Depositions Permitted.* A party may depose: (A) any party; (B) any person disclosed as an expert witness under Rule 26.1(d)(1); (C) any treating physician in a medical malpractice action; and (D) any document custodian in order to secure production of documents and establish evidentiary foundation. Unless all parties agree or the court orders otherwise for good cause, a party may not depose any other person or depose a person who has already been deposed in the action.

(2) *Depositions by Plaintiff Earlier Than 30 Days After Serving the Summons and Complaint.* A plaintiff must obtain leave of court to take a deposition earlier than 30 days after serving the summons and complaint on any defendant unless: (A) a defendant has served a deposition notice or otherwise sought discovery under these rules; or (B) the plaintiff certifies in the deposition notice, with supporting facts, that the deponent is expected to leave Arizona and will be unavailable for deposition after expiration of the 30-day period. If a party shows that it was unable, despite diligent efforts, to obtain counsel to represent it at a deposition taken under this Rule 30(a)(2), the deposition may not be used against that party.

(3) *Incarcerated Deponents.* Subject to Rule 30(a)(1), a party may depose an incarcerated person only by agreement of the person's custodian or by leave of court on such terms as the court orders.

(4) *Compelling Attendance of Deponent.* A party may compel a nonparty deponent's attendance by serving a subpoena under Rule 45. A party noticing the deposition of a party--or an officer, director, or managing agent of a party--need not serve a subpoena under Rule 45.

(b) Notice of a Deposition; Method of Recording; Deposition by Remote Means; Deposition of an Entity; Other Formal Requirements.

(1) *Notice Generally.* Unless all parties agree or the court orders otherwise, a party who wants to depose a person by oral questions must serve written notice to every other party at least 10 days before the date of the deposition. The notice must state the date, time, and place of the deposition and, if known, the deponent's name and address. If the deponent's name is unknown, the notice must provide a general

description sufficient to identify the person or the particular class or group to which the person belongs.

(2) *Producing Materials.* If a subpoena for documents, electronically stored information, or tangible things has been or will be served on the deponent, the materials designated for production in the subpoena must be listed in the deposition notice or in an attachment to the notice. A deposition notice to a deponent who is a party to the action may be accompanied by a separate request under Rule 34 to produce documents, electronically stored information, or tangible things at the deposition. The procedures under Rule 34 apply to any such request.

(3) *Method of Recording.*

(A) Permitted Methods. Unless all parties agree or the court orders otherwise, testimony must be recorded by a certified reporter and may also be recorded by audio or audiovisual means.

(B) Method Stated in the Notice. The party who notices the deposition must state in the notice the method for recording the testimony. If the deposition will be recorded by audiovisual means, the notice must state the method and manner of audiovisual recording and the person or company that will conduct such recording. Unless the parties agree or the court orders otherwise, the noticing party bears the recording costs.

(C) Additional Method. With at least two days prior written notice to the deponent and other parties, any other party may designate another method for recording the testimony in addition to that specified in the original notice. Unless the parties agree or the court orders otherwise, that party bears the expense of the additional recording.

(D) Transcription. Any party may request that the testimony be transcribed. If the testimony is transcribed, the party who originally noticed the deposition is responsible for the cost of the original transcript. Any other party may, at its expense, arrange to receive a certified copy of the transcript.

(4) *By Remote Means.* The parties may agree or the court may order that a deposition be taken by telephone or other remote means. For the purposes of this rule and Rules 28(a), 37(a)(2), 45(b)(3)(B), and 45(e), the deposition takes place where the deponent answers the questions. If the deponent is not in the officer's physical presence, the officer may nonetheless place the deponent under oath or

affirmation with the same force and effect as if the deponent was in the officer's physical presence.

(5) Officer's Duties.

(A) Before Deposition. Unless the parties agree otherwise under Rule 29, a deposition must be conducted before an officer appointed or designated under Rule 28. The officer must begin the deposition with a statement or notation on the record that includes:

- (i) the officer's name, certification number, if any, and business address;
- (ii) the date, time, and place of the deposition;
- (iii) the deponent's name;
- (iv) the officer's administration of the oath or affirmation to the deponent; and
- (v) the identity of all persons present.

(B) Conducting the Deposition; Avoiding Distortion. If the deposition is recorded by audio or audiovisual means, the officer must repeat the items in Rule 30(b)(5)(A)(i) through (iii) at the beginning of each unit of the recording medium. The deponent's and attorneys' appearance, voice, and demeanor must not be distorted through recording techniques. The camera should squarely face the witness and avoid depicting other persons.

(C) After the Deposition. At the end of the deposition, the officer must state or note on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other relevant matters.

(6) Notice or Subpoena Directed to an Entity. In its deposition notice or subpoena, a party may name as the deponent a public or private corporation, a limited liability company, a partnership, an association, a governmental agency, or other entity, and must then describe with reasonable particularity the matters for examination. The named entity must then designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf. If the entity designates more than one person to testify, it must set out the matters on which each designated person will testify. Each designated person must testify about information known or reasonably available to the entity. This Rule 30(b)(6) does not preclude a deposition by any other procedure allowed by these rules.

(c) Examination and Cross-Examination; Record of the Examination; Objections; Conferences Between Deponent and Counsel; Written Questions.

(1) *Examination and Cross-Examination.* The examination and cross-examination of a deponent proceed as they would at trial under the Arizona Rules of Evidence, except for Rules 103 and 615. Any party not present within 30 minutes after the time specified in the notice of deposition waives any objection that the deposition was taken without its presence. After putting the deponent under oath or affirmation, the officer personally--or a person acting in the presence and under the direction of the officer--must record the testimony by the method(s) designated under Rule 30(b)(3).

(2) *Objections.* The officer must note on the record any objection made during the deposition--whether to evidence, to a party's, deponent's, or counsel's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition. An objection must be stated concisely, in a nonargumentative manner, and without suggesting an answer to the deponent. Unless requested by the person who asked the question, an objecting person must not specify the defect in the form of a question or answer. Counsel may instruct a deponent not to answer--or a deponent may refuse to answer--only when necessary to preserve a privilege, to enforce a limit ordered by the court, or to present a motion under Rule 30(d)(3). Otherwise, the deponent must answer, and the testimony is taken subject to any objection.

(3) *Conferences Between Deponent and Counsel.* The deponent and his or her counsel may not engage in continuous and unwarranted conferences off the record during the deposition. Unless necessary to preserve a privilege, the deponent and his or her counsel may not confer off the record while a question is pending.

(4) *Participating Through Written Questions.* Instead of participating in the oral examination, a party may serve written questions in a sealed envelope on the party who noticed the deposition, who must deliver them to the officer. The officer must ask the deponent those questions and record the answers verbatim.

(d) Duration; Sanctions; Motion to Terminate or Limit.

(1) *Duration.* Unless the parties agree or the court orders otherwise, a deposition is limited to 4 hours and must be completed in a single day.

Depositions of fact witnesses are further limited by the total amount of time permitted for fact witnesses by a case's tier assignment under Rule 26.2(f), which

limit may not be extended except as provided in Rule 26.2(g) and (h).

Notwithstanding those limits, the court must allow additional time consistent with Rule 26(b)(1) and (2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

(2) *Sanctions*. The court may impose appropriate sanctions--including any order under Rule 16(h)--against a party or attorney who has engaged in unreasonable, groundless, abusive, or obstructionist conduct in connection with a deposition including an unreasonable refusal to agree to extend a deposition beyond 4 hours.

(3) *Motion to Terminate or Limit*.

(A) *Grounds*. At any time during a deposition, the deponent or a party may move to terminate or limit the deposition on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. The deponent or party must file the motion in the court where the action is pending or the court where the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(B) *Order*. The court may order that the deposition be terminated or that its scope and manner be limited as provided in Rule 26(c). If terminated, the deposition may be resumed only by order of the court where the action is pending.

(C) *Award of Expenses*. Rule 37(a)(5) applies to the award of expenses.

(e) Review by the Deponent; Changes.

(1) *Review; Statement of Changes*. If requested by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign and deliver to the officer a statement listing the changes and the reasons for making them.

(2) *Officer's Certificate to Attach Changes*. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent made during the 30-day period.

(f) Officer's Certification and Delivery; Documents and Tangible Things; Copies of the Transcript or Recording.

(1) *Certification and Delivery.* The officer must certify in writing that the deponent was duly sworn by the officer and that the deposition accurately records the deponent's testimony. The certificate must accompany the record of the deposition. Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked "Deposition of [witness's name]" and must promptly deliver it to the attorney who arranged for the transcript or recording. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

(2) *Documents and Tangible Things.*

(A) *Originals and Copies.* Documents and tangible things produced for inspection during a deposition must, on a party's request, be marked for identification and attached to the deposition--and any party may inspect and copy them--but if the person who produced them wants to keep the originals, the person may:

(i) offer copies to be marked, attached to the deposition, and then used as originals--after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or

(ii) give all parties a fair opportunity to inspect and copy the originals after they are marked--in which event the originals may be used as if attached to the deposition.

(B) *Order Regarding the Originals.* On motion, the court may order that the originals be attached to the deposition until final disposition of the action.

(3) *Copies of the Transcript or Recording.* Unless the parties agree or the court orders otherwise, the officer must retain the record of a deposition according to the applicable records retention and disposition schedules adopted by the Supreme Court. Upon payment of a reasonable charge, the officer must provide a copy of the transcript or recording to any party or to the deponent.

(g) Failure to Attend a Deposition or Serve a Subpoena; Expenses. A party who attends a noticed deposition in person or by an attorney may recover reasonable expenses for attending, including attorney's fees, if the noticing party failed to:

(1) attend and proceed with the deposition; or

(2) serve a subpoena on a nonparty deponent, who did not attend as a result of the lack of service.

Appendix B.2

Rule 32. Using Depositions in Court Proceedings

(a) Using Depositions.

(1) *In the Same or Similar Action.* At a hearing or trial, all or part of a deposition taken in the action--or in another federal or state court action involving the same subject matter between the same parties, or their representatives or predecessors in interest--may be used against a party if:

(A) the deposition testimony would be admissible under the Arizona Rules of Evidence if the deponent were present and testifying;

(B) the party or its predecessor in interest was present or represented at the deposition or had reasonable notice of it; and

(C) the party, its representative, or its predecessor in interest had an opportunity and similar motive to develop the testimony by examination at the deposition.

(2) *In a Different Action.* At a hearing or trial, all or part of a deposition taken in another federal or state court action may be used as allowed by the Arizona Rules of Evidence.

(3) *Deponent's Availability at Trial.* Subject to Rule 32(a)(1) and (2), all or part of a deposition may be used at trial regardless of the deponent's availability to testify at trial. Use of a deposition at trial does not limit, in any way, any party's right to call the deponent to testify in person.

(4) *Using Part of a Deposition.* If a party offers in evidence only part of a deposition, the court may require that party to introduce contemporaneously other parts that in fairness should be considered with the part offered.

(5) *Substituted Party.* Substituting a party under Rule 25 does not affect the right to use a previously taken deposition.

(b) Objections to Admissibility. Subject to Rules 28(b) and (c), and 32(d)(3), an objection may be made at a hearing or trial to the admission of any deposition testimony that would be inadmissible if the witness were present and testifying.

(c) Form of Presentation. Unless the court orders otherwise, a party must provide a transcript of any deposition testimony the party offers, but also may provide the court with the testimony in nontranscript form. On any party's request, deposition testimony offered in a jury trial for any purpose other than impeachment must be presented in nontranscript form, if available, unless the court orders otherwise for good cause. If the testimony is unavailable in audio or audiovisual form, the court may require a single presenter to read the designated parts of the deposition testimony to the jury.

(d) Preservation and Waiver of Objections.

(1) *To the Notice.* A party objecting to an error or irregularity in a deposition notice must promptly serve the objection in writing on the party giving the notice.

(2) *To the Officer's Qualification.* A party objecting to the qualification of the officer before whom a deposition is to be taken must make such objection:

(A) before the deposition begins; or

(B) promptly after the basis for disqualification becomes known or, with reasonable diligence, could have been known.

(3) *To the Method of Recording Deposition.* The failure to designate an alternate method of recording pursuant to Rule 30(b)(3) does not waive any party's right to object to the admissibility or use of any recording made by *any designated method*.

(4) *To the Taking of the Deposition.*

(A) *To Competence, Relevance, or Materiality.* A party objecting to a deponent's competence--or to the competence, relevance, or materiality of testimony--must make the objection before or during the deposition if the ground for the objection could have been corrected at that time.

(B) *To an Error or Irregularity at an Oral Deposition.* A party objecting to the manner of taking the deposition, the form of a question or answer, the oath or affirmation, a party's conduct, or other matters that could be corrected at that time must timely make the objection during the deposition.

(C) *To a Written Question.* A party objecting to the form of a written question under Rule 31 must serve the objection under Rule 31(b)(3).

(5) *To the Officer's Completion and Return of Deposition.* A party objecting to how the officer (A) transcribed the testimony, or (B) prepared, signed, certified, sealed, endorsed, delivered, or otherwise dealt with the deposition, must file a motion to suppress promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known.