

N.Y. Comp. Codes R. & Regs. tit. 22, § 202.15

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Compilation of Codes, Rules and Regulations of the State of New York Currentness

Title 22. Judiciary

Subtitle A. Judicial Administration.

Chapter II. Uniform Rules for the New York State Trial Courts

Part 202. Uniform Civil Rules for the Supreme Court and the County Court (Refs & Annos)

→ **Section 202.15. Videotape recording of civil depositions**

(a) *When permitted.* Depositions authorized under the provisions of the Civil Practice Law and Rules or other law may be taken, as permitted by section 3113(b) of the Civil Practice Law and Rules, by means of simultaneous audio and visual electronic recording, provided such recording is made in conformity with this section.

(b) *Other rules applicable.* Except as otherwise provided in this section, or where the nature of videotaped recording makes compliance impossible or unnecessary, all rules generally applicable to examinations before trial shall apply to videotaped recording of depositions.

(c) *Notice of taking deposition.* Every notice or subpoena for the taking of a videotaped deposition shall state that it is to be videotaped and the name and address of the videotape operator and of the operator's employer, if any. The operator may be an employee of the attorney taking the deposition. Where an application for an order to take a videotaped deposition is made, the application and order shall contain the same information.

(d) *Conduct of the examination.*

(1) The deposition shall begin by one of the attorneys or the operator stating on camera:

- (i) the operator's name and address;
- (ii) the name and address of the operator's employer;
- (iii) the date, the time and place of the deposition; and
- (iv) the party on whose behalf the deposition is being taken.

The officer before whom the deposition is taken shall be a person authorized by statute and shall identify himself or herself and swear the witness on camera. If the deposition requires the use of more than one tape, the end of each tape and the beginning of each succeeding tape shall be announced by the operator.

(2) Every videotaped deposition shall be timed by means of a time-date generator which shall permanently record hours, minutes and seconds. Each time the videotape is stopped and resumed, such times shall be orally announced on the tape.

(3) More than one camera may be used, either in sequence or simultaneously.

(4) At the conclusion of the deposition, a statement shall be made on camera that the recording is completed. As

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soon as practicable thereafter, the videotape shall be shown to the witness for examination, unless such showing and examination are waived by the witness and the parties.

(5) Technical data, such as recording speeds and other information needed to replay or copy the tape, shall be included on copies of the videotaped deposition.

(e) *Copies and transcription.* The parties may make audio copies of the deposition and thereafter may purchase additional audio and audio-visual copies. A party may arrange to have a stenographic transcription made of the deposition at his or her own expense.

(f) *Certification.* The officer before whom the videotape deposition is taken shall cause to be attached to the original videotape recording a certification that the witness was fully sworn or affirmed by the officer and that the videotape recording is a true record of the testimony given by the witness. If the witness has not waived the right to a showing and examination of the videotape deposition, the witness shall also sign the certification in accordance with the provisions of section 3116 of the Civil Practice Law and Rules.

(g) *Filing and objections.*

(1) If no objections have been made by any of the parties during the course of the deposition, the videotape deposition may be filed by the proponent with the clerk of the trial court and shall be filed upon the request of any party.

(2) If objections have been made by any of the parties during the course of the deposition, the videotape deposition, with the certification, shall be submitted to the court upon the request of any of the parties within 10 days after its recording, or within such other period as the parties may stipulate, or as soon thereafter as the objections may be heard by the court, for the purpose of obtaining rulings on the objections. An audio copy of the sound track may be submitted in lieu of the videotape for this purpose, as the court may prefer. The court may view such portions of the videotape recording as it deems pertinent to the objections made, or may listen to an audiotape recording. The court, in its discretion, may also require submission of a stenographic transcript of the portion of the deposition to which objection is made, and may read such transcript in lieu of reviewing the videotape or audio copy.

(3)

(i) The court shall rule on the objections prior to the date set for trial and shall return the recording to the proponent of the videotape with notice to the parties of its rulings and of its instructions as to editing. The editing shall reflect the rulings of the court and shall remove all references to the objections. The proponent, after causing the videotape to be edited in accordance with the court's instructions, may cause both the original videotape recording and the deleted version of the recording, clearly identified, to be filed with the clerk of the trial court, and shall do so at the request of any party. Before such filing, the proponent shall permit the other party to view the edited videotape.

(ii) The court may, in respect to objectionable material, instead of ordering its deletion, permit such material to be clearly marked so that the audio recording may be suppressed by the operator during the objectionable portion when the videotape is presented at the trial. In such case the proponent may cause both the original videotape recording and a marked version of that recording, each clearly identified, to be filed with the clerk of the trial court, and shall do so at the request of any party.

(h) *Custody of tape.* When the tape is filed with the clerk of the court, the clerk shall give an appropriate receipt for the tape and shall provide secure and adequate facilities for the storage of videotape recordings.

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(i) *Use at trial.* The use of videotape recordings of depositions at the trial shall be governed by the provisions of the Civil Practice Law and Rules and all other relevant statutes, court rules and decisional law relating to depositions and relating to the admissibility of evidence. The proponent of the videotaped deposition shall have the responsibility of providing whatever equipment and personnel may be necessary for presenting such videotape deposition.

(j) *Applicability to audio taping of depositions.* Except where clearly inapplicable because of the lack of a video portion, these rules are equally applicable to the taking of depositions by audio recording alone. However, in the case of the taking of a deposition upon notice by audio recording alone, any party, at least five days before the date noticed for taking the deposition, may apply to the court for an order establishing additional or alternate procedures for the taking of such audio deposition, and upon the making of the application, the deposition may be taken only in accordance with the court order.

(k) *Cost.* The cost of videotaping or audio recording shall be borne by the party who served the notice for the videotaped or audio recording of the deposition, and such cost shall be a taxable disbursement in the action unless the court in its discretion orders otherwise in the interest of justice.

(l) *Transcription for appeal.* On appeal, visual and audio depositions shall be transcribed in the same manner as other testimony and transcripts filed in the appellate court. The visual and audio depositions shall remain part of the original record in the case and shall be transmitted therewith. In lieu of the transcribed deposition and, on leave of the appellate court, a party may request a viewing of portions of the visual deposition by the appellate court but, in such case, a transcript of pertinent portions of the deposition shall be filed as required by the court.

Sec. filed Jan. 9, 1986 eff. Jan. 6, 1986.

22 NYCRR 202.15, 22 NY ADC 202.15

Current through amendments included in the New York State Register, Volume XXXIII, Issue 1, dated January 5, 2011.

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