

1 **1-030. Depositions upon oral examination.**

2 A. **When depositions may be taken.** After commencement of the action, any
3 party may take the testimony of any person, including a party, by deposition upon oral
4 examination. The parties shall confer in good faith regarding the date, time and place of
5 each deposition to be taken. A party serving a notice of deposition shall make a good faith
6 effort to avoid scheduling conflicts of parties, witnesses and counsel. Leave of court,
7 granted with or without notice, shall be obtained only if the plaintiff seeks to take a
8 deposition prior to the expiration of thirty (30) days after service of the summons and
9 complaint upon any defendant or service made under Paragraph F of Rule 1-004 NMRA,
10 except that leave is not required

11 (1) if a defendant has served a notice of taking deposition or otherwise
12 sought discovery; or

13 (2) if the notice

14 (a) states that the person to be examined will be unavailable for
15 examination or is about to go out of the state and will be unavailable for examination in
16 the state unless the person's deposition is taken before expiration of the thirty (30) day
17 period; and

18 (b) sets forth facts to support the statement.

19 If a party shows that, when the party was served with notice under this
20 subparagraph, the party was unable through the exercise of diligence to obtain counsel to

1 represent the party at the taking of the deposition, the deposition may not be used against
2 the party.

3 The attendance of witnesses may be compelled by subpoena as provided in Rule 1-
4 045 NMRA. The deposition of a person confined in prison may be taken only by leave of
5 court on such terms as the court prescribes.

6 **B. Notice of examination: general requirements; special notice;**
7 **nonstenographic recording; production of documents and things; deposition of**
8 **organization; deposition by telephone.**

9 (1) A party desiring to take the deposition of any person upon oral
10 examination shall give at least ten (10) days notice in writing to every other party to the
11 action. The notice shall state the time and place for taking the deposition and the name and
12 address of each person to be examined, if known, and, if the name is not known, a general
13 description sufficient to identify the person or the particular class or group to which the
14 person belongs. If a subpoena duces tecum is to be served on the person to be examined,
15 the designation of the materials to be produced as set forth in the subpoena shall be attached
16 to or included in the notice.

17 (2) The party taking the deposition shall state in the notice the method
18 by which the testimony shall be recorded. Unless the court orders otherwise, it may be
19 recorded by sound, sound-and-visual or stenographic means, and the party taking the
20 deposition shall bear the cost of the recording. Any party may arrange for a transcription
21 to be made from the recording of a deposition taken by nonstenographic means.

1 (3) With prior notice to the deponent and other parties, any party may
2 designate another method to record the deponent’s testimony in addition to the method
3 specified by the person taking the deposition. The additional record or transcript shall be
4 made at that party’s expense unless the court otherwise orders.

5 (4) Unless otherwise agreed by the parties, a deposition shall be
6 conducted before an officer appointed or designated under Rule 1-028 NMRA and shall
7 begin with a statement on the record by the officer that includes

- 8 (a) the officer’s name and business address;
- 9 (b) the date, time and place of the deposition;
- 10 (c) the name of the deponent;
- 11 (d) the administration of the oath or affirmation to the deponent;

12 and

- 13 (e) an identification of all persons present. If the deposition is
14 recorded other than stenographically, the officer shall repeat items (a) through (c) at the
15 beginning of each unit of recorded tape or other recording medium. The appearance or
16 demeanor of deponents or attorneys shall not be distorted through camera or sound-
17 recording techniques. At the end of the deposition, the officer shall state on the record that
18 the deposition is complete and shall set forth any stipulations made by counsel concerning
19 the custody of the transcript or recording and the exhibits, or concerning other pertinent
20 matters.

1 (5) The notice to a party deponent may be accompanied by a request
2 made in compliance with Rule 1-034 NMRA for the production of documents and tangible
3 things at the taking of the deposition. The procedure of Rule 1-034 NMRA shall apply to
4 the request.

5 (6) A party may, in the party's notice and in a subpoena, name as the
6 deponent a public or private corporation or a partnership or association or governmental
7 agency and describe with reasonable particularity the matters on which examination is
8 requested. In that event, the organization so named shall designate one or more officers,
9 directors or managing agents, or other persons who consent to testify on its behalf, and may
10 set forth, for each person designated, the matters on which the person will testify. A
11 subpoena shall advise a non-party organization of its duty to make such a designation. The
12 persons so designated shall testify as to matters known or reasonably available to the
13 organization. This subparagraph does not preclude taking a deposition by any other
14 procedure authorized in these rules.

15 (7) A deposition may be taken by telephone or other remote electronic
16 means.

17 C. **Examination and cross-examination; record of examination; oath;
18 objections.** Examination and cross-examination of witnesses may proceed as permitted at
19 the trial under the New Mexico Rules of Evidence, except Rules 11-103 and 11-615
20 NMRA. The examination shall commence at the time and place specified in the notice or
21 within thirty (30) minutes after the time specified. The officer before whom the deposition

1 is to be taken shall put the witness on oath or affirmation and shall personally, or by
2 someone acting under the officer's direction and in the officer's presence, record the
3 testimony of the witness. If the deposition is to be stenographically recorded, the court
4 reporter shall administer the oath or affirmation to the deponent. The testimony shall be
5 taken stenographically or recorded by any other method authorized by Subparagraph (2) of
6 Paragraph B of this rule. All objections made at the time of the examination to the
7 qualifications of the officer taking the deposition, to the manner of taking it, to the evidence
8 presented, to the conduct of any party, or to any other aspect of the proceedings, shall be
9 noted by the officer upon the record of the deposition; but the examination shall proceed,
10 with the testimony being taken subject to the objections. Any party who shows a document
11 to the witness during examination shall provide a copy to all other parties before the
12 deposition begins or when the document is shown to the witness. The officer may go off
13 the record only with the agreement of all parties, which shall not be unreasonably withheld.
14 In lieu of participating in the oral examination, parties may serve written questions in a
15 sealed envelope on the party taking the deposition and the party taking the deposition shall
16 transmit them to the officer, who shall propound them to the witness and record the answers
17 verbatim.

18 **D. Objections; duration; motion to terminate or limit examination.**

19 (1) Any objection during a deposition shall be stated concisely and in a
20 non-argumentative and non-suggestive manner. Objections to form or foundation may be
21 made only by stating "objection – form", or "objection – foundation". No specification of

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1 the defect in the form or foundation of the question or the answer shall be stated unless
2 requested by the party propounding the question. Argumentative interruptions shall not be
3 permitted. When a question is pending, or a document has been presented to the deponent,
4 no one may interrupt the deposition until the answer is given, except when necessary to
5 preserve a privilege, to enforce a limitation directed by the court or to present a motion
6 under Subparagraph (2) of this paragraph.

7 (2) Unless otherwise authorized by the court or stipulated by the parties,
8 a deposition of a person other than an expert witness is limited to one day and lasting no
9 more than seven (7) hours on the record. The court must allow additional time consistent
10 with Subparagraph (2) of Paragraph B of Rule 1-026 NMRA if needed for a fair
11 examination of the deponent or if the deponent or another person, or other circumstance,
12 impedes or delays the examination.

13 (3) At any time during a deposition, on motion of a party or of the
14 deponent and upon a showing that the examination is being conducted in bad faith or in
15 such manner as unreasonably to annoy, embarrass or oppress the deponent or party, the
16 court in which the action is pending or the court in the county where the deposition is being
17 taken may order the officer conducting the examination to cease forthwith from taking the
18 deposition, or may limit the scope and manner of the taking of the deposition as provided
19 in Paragraph C of Rule 1-026 NMRA. If the order made terminates the examination, it shall
20 be resumed thereafter only upon the order of the court in which the action is pending. Upon
21 demand of the objecting party or deponent, the taking of the deposition shall be suspended

1 for the time necessary to make a motion for an order. The provisions of this rule apply to
2 depositions being taken for use outside New Mexico. The provisions of Subparagraph (4)
3 of Paragraph A of Rule 1-037 NMRA apply to the award of expenses incurred in relation
4 to the motion.

5 E. **Review by witness; changes; signing.** If requested by the deponent or a
6 party before completion of the deposition, the deponent shall have thirty (30) days after
7 being notified by the officer that the transcript or recording is available in which to review
8 the transcript or recording and, if there are changes in form or substance, to sign a statement
9 reciting such changes and the reasons given by the deponent for making them. The officer
10 shall indicate in the certificate prescribed by Subparagraph (1) of Paragraph F of this rule
11 whether any review was requested and, if so, shall append any changes made by the
12 deponent during the period allowed.

13 F. **Certification and delivery by officer; exhibits; copies.**

14 (1) The officer shall certify on the deposition that the witness was duly
15 sworn by the officer and that the deposition is a true record of the testimony given by the
16 witness. This certificate shall be in writing and accompany the record of the deposition.
17 Unless otherwise ordered by the court, the officer shall securely seal the deposition and
18 exhibits in an envelope or package with the title of the action and marked “Deposition of
19 [here insert name of witness]” and shall promptly send it to the attorney who arranged for
20 the transcript or recording, who shall store it under conditions that will protect it against
21 loss, destruction, tampering or deterioration. Documents and things produced for

1 inspection during the examination of the witness shall, upon the request of a party, be
2 marked for identification and attached to and returned with the deposition. Documents and
3 things produced for inspection may be inspected and copied by any party, except that if the
4 person producing the materials desires to retain them the person may

5 (a) offer copies to be marked for identification and attached to
6 the deposition and to serve thereafter as originals, if the person affords to all parties fair
7 opportunity to verify the copies by comparison with the originals; or

8 (b) offer the originals to be marked for identification, after
9 giving to each party an opportunity to inspect and copy them, in which event the materials
10 may then be used in the same manner as if attached to the deposition. Any party may move
11 for an order that the original be attached to the deposition to the court, pending final
12 disposition of the case.

13 (2) Upon payment of reasonable charges therefor, the officer shall
14 furnish a copy of the transcript or other recording of the deposition to any party or to the
15 deponent.

16 (3) Any party filing a deposition shall give prompt notice of its filing to
17 all other parties.

18 **G. Failure to attend or to serve subpoena; expenses; notice of non-**
19 **appearance.**

20 (1) If the party giving the notice of the taking of a deposition fails to
21 attend and proceed therewith and another party attends in person or by attorney pursuant

1 to the notice, the court may order the party giving the notice to pay to such other party the
2 reasonable expenses incurred by that party and that party's attorney in attending, including
3 reasonable attorney's fees.

4 (2) If the party giving the notice of the taking of a deposition of a
5 witness fails to serve a subpoena upon the witness and the witness because of such failure
6 does not attend, and if another party attends in person or by attorney because that party
7 expects the deposition of that witness to be taken, the court may order the party giving the
8 notice to pay to such other party the reasonable expenses incurred by that party and that
9 party's attorney in attending, including reasonable attorney's fees.

10 (3) If a motion for protective order and notice of non-appearance are
11 filed and actual notice of the non-appearance is given to all parties at least three (3) days
12 before the scheduled deposition, then the failure of a deponent or managing agent or a party
13 to appear at the time and place designated shall not be considered a willful failure to appear
14 within the meaning of Paragraph D of Rule 1-037 NMRA or contemptible conduct under
15 Paragraph E of Rule 1-045 NMRA, unless the court finds that the motion is frivolous or
16 for dilatory purposes.

17 H. **Final disposition of depositions.** After a judgment in a civil action
18 becomes final, or the case is otherwise finally closed, the original deposition may be
19 destroyed.

20 [As amended, effective October 15, 1986; August 1, 1988; January 1, 1999; May 1, 2002;
21 November 1, 2002; February 16, 2004; as amended by Supreme Court Order 06-8300-07,
RCR No. 832

1 effective May 1, 2006; by Supreme Court Order No. 11-8300-052, effective for cases filed
2 or pending on or after February 17, 2012.]

3 **Committee commentary.** — Paragraph E requires a deponent to sign a statement
4 reciting any changes that the deponent makes to a deposition transcript and the reasons for
5 those changes. The signed statement is then attached to the deposition transcript by the
6 court reporter. Electronic transmission of documents is increasingly common, which raises
7 the question of whether a facsimile of an original signed statement from a deponent is
8 sufficient to meet the requirements of Paragraph E. The Committee believes that any
9 electronically transmitted form of an original signed statement of a deponent meets the
10 Rule’s requirements. If a dispute arises regarding the authenticity of a signature to a signed
11 statement, the burden of establishing the signature’s authenticity is on the proponent of the
12 electronically transmitted form of the original signed statement. *Cf., e.g.,* Rule 11-1003
13 NMRA (“A duplicate is admissible to the same extent as the original unless a genuine
14 question is raised about the original’s authenticity. . . .”).

15 Rule 1-030(C) NMRA provides that examination and cross-examination of
16 witnesses may proceed as permitted at trial under the New Mexico Rules of Evidence,
17 “except Rules 11-103 and 11-615 NMRA.” The reference to Rule 11-615 NMRA addresses
18 whether other potential deponents can attend a deposition. Rule 1-030(C) NMRA provides
19 that other witnesses are not automatically excluded from a deposition simply by the request
20 of a party. Exclusion, however, can be ordered under Rule 1-026(C)(6) NMRA when
21 appropriate; and, if exclusion is ordered, consideration should be given as to whether the

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1 excluded witnesses likewise should be precluded from reading, or being otherwise
2 informed about, the testimony given in the earlier depositions. Rule 1-030(C) NMRA
3 addresses only the matter of attendance by potential deponents, and does not attempt to
4 resolve issues concerning attendance by others, such as members of the public or press.

5 [Adopted by Supreme Court Order No. 14-8300-010, effective for all cases filed or pending
6 on or after December 31, 2014; as amended by Supreme Court Order No. 20-8300-005,
7 effective for all cases pending or filed on or after December 31, 2020.]