

STATE BAR OF TEXAS

COURT RULES COMMITTEE

REQUEST FOR NEW RULES OR CHANGE OF EXISTING RULE

TEXAS RULES OF CIVIL PROCEDURE

I. Exact wording existing Rule:

Rule 204. Examination, Cross-Examination and Objections.

1. **Written Cross-Questions on Oral Examination.** At any time before the expiration of ten days from the date of the service of the notice provided for in Rule 200, any party, in lieu of participating in the oral examination may serve written questions on the party proposing to take the deposition who shall cause them to be transmitted to the officer authorized to take the deposition who shall propound them to the witness and record the answers verbatim.

2. **Oath.** Every person whose deposition is taken upon oral examination shall be first cautioned and sworn to testify the truth, the whole truth and nothing but the truth.

3. **Examination.** The witness shall be carefully examined, his testimony shall be recorded at the time it is given and thereafter transcribed by the officer taking the deposition, or by some person under his personal supervision.

4. **Objections to Testimony.** The officer taking an oral deposition shall not sustain objections made to any of the testimony or fail to record the testimony of the witness because an objection is made by any of the parties or attorneys engaged in taking the testimony. Any objections made when the deposition is taken shall be recorded with the testimony and reserved for the action of the court in which the cause is pending. Absent express agreement recorded in the deposition to the contrary:

- (a) objections to the form of questions or the non-responsiveness of answers are waived if not made at the taking of an oral deposition and;
- (b) except as provided in (a) above, or unless otherwise provided by agreement of the parties recorded by the officer in the deposition transcript, the court shall not be confined to objections made at the taking of the testimony.

II. The proposed new rule adds to paragraph 4(a) and in addition adds a footnote by way of comment:

"(a) objections to the form¹ of questions or the non-responsiveness of answers are waived if not made at the taking of an oral deposition. ~~and;~~ If an objection as to form is made, upon request, the objecting party shall explain the grounds for the objection in a non-argumentative and non-suggestive manner or the objection is waived, and;"

III. Brief statement of reasons for requested change and advantages to be served by the proposed new rule:

The Court Rules Committee considered the SCAC's proposal that objections during oral depositions should be restricted to "objection leading", "objection as to form", and "objection non-responsive". The Court Rules Committee was of the opinion that such an attempt to restrict objections would be unworkable because there are too many unforeseen situations that arise in the course of a deposition where other types of objections may have to be made. The Court Rules Committee was of the opinion that a broader rule should be adopted, which is the Court Rules Committee's proposed Rule 200, regarding conduct of depositions by counsel. In addition, the Court Rules Committee was of the opinion that the courts and lawyers needed some guidance as to what was meant by objections as to form and when such objection as to form should be explained.

Hence, proposed Rule 200 provides that objections which are argumentative or coach the witness are prohibited and may be grounds for termination of the deposition and the proposed Rule 204 change provides that if an objection as to form is made, upon request, the objecting party shall explain the objection in a non-argumentative and non-suggestive manner. The questioner then has an opportunity to correct the question if desired.

The comment also provides guidance to the lawyers and the trial courts by stating that "objection as to form" is ordinarily sufficient without further explanation and describes what is generally covered by an objection as to form.

¹ Comment. The court anticipates that in most circumstances the statement "objection as to form" should be sufficient without further explanation. When an objection as to form is made, the objection includes but is not limited to the following: leading, misleading, vague and ambiguous, compound, assumes a fact(s), fails to lay a proper predicate, fails to establish qualifications of an expert or fails to establish qualifications to state an opinion.