

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 200. Depositions Upon Oral Examination**

1. **When Depositions May be Taken.** After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination.

Leave of court, granted with or without notice, must be obtained only if a party seeks to take a deposition prior to the appearance day of any defendant.

2. **Notice of Examination: General Requirements; Notice of Deposition of Organization.**

a. Reasonable notice must be served in writing by the party, or his attorney, proposing to take a deposition upon oral examination, to every other party or his attorney of record. The notice shall state the name of the deponent, the time and the place of the taking of his deposition, and if the production of documents or tangible things in accordance with Rule 201 is desired, a designation of the items to be produced by the deponent either by individual item or by category and which describes each item and category with reasonable particularity. The notice shall also state the identity of persons who will attend other than the witness, parties, spouses of parties, counsel, employees of counsel, and the officer taking the deposition. If any party intends to have any other persons attend, that party must give reasonable notice to all parties of the identity of such other persons.

b. A party may in his notice name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested.

II. Proposed Rule:

**Rule 200. Depositions Upon Oral Examination**

1. No Change.

2. No Change.
  - b. No change.
  - c. No change.

3. Limitation. Each party to an oral deposition shall be entitled to not more than six hours in which to conduct the party's examination of the witness being deposed, except where the depositions are being taken through an interpreter in which event each party shall be entitled to eight hours in which to examine such witness. If more than one party is represented by the same attorney(s) such parties shall be considered as one party. The court reporter shall note on the record the time of the commencement of the deposition, the time taken for breaks, including off the record discussions, and the time of termination of the deposition. Time taken for breaks and off the record discussions shall not be counted as part of the examination. The time for each party to examine a witness may be extended by agreement of all parties in writing prior to the commencement of the deposition, by agreement of the parties present at the oral deposition announced on the record of the deposition or by order of the court upon motion of any party or the court's own initiative.

4. **Deposition Conduct.**

a. Deponent. Before the first question is asked in the deposition, the officer taking the deposition, or someone else when no officer is present, shall read, as part of the record, the following to the deponent:

"You are obliged to be honest and cooperative in this deposition and not to cause any unreasonable delay. Do you understand?"

and obtain, as a part of the record, an affirmation of the deponent that he or she understands such obligations.

b. Counsel. All counsel are expected to be courteous and cooperate with each other and the deponent. Objections, side bar remarks or comments which are argumentative or coach the deponent's answers are prohibited and may be grounds for termination of the deposition. A deponent shall not be instructed not to answer a question except to preserve a privilege, to enforce a protective order, to protect a witness from an abusive question, or to secure a ruling from the court prior to answering a question.

c. Termination of Deposition. A deposition may be terminated upon the expiration of time provided in this rule or for conduct prohibited by this rule or to obtain a ruling prior to an answer. If the termination of the deposition is brought to the attention of the court through the filing of a motion, it shall be determined in accordance with Rule 215.

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

The proposal is part of a design to cut down on the cost of litigation. By limiting oral depositions to six hours or eight hours if an interpreter is required, without agreement of the parties or court order, unnecessary lengthy depositions can be avoided and costs reduced. In addition, witnesses should be advised that they are not to cause any unreasonable delays in the deposition and lawyers are to conduct themselves in such a manner as they do not "coach" the witness by side bar remarks, comments and argumentative objections. If such conduct occurs this is grounds for terminating the deposition and seeking a court order for sanctions against the offending attorney and/or witness.