

Depositions in lieu of live testimony ~~and transcripts of prior testimony.~~

(A) Upon written motion of any ~~representative of record~~ party, and upon service of that motion to ~~all the other representatives~~ party's representative of record, the ~~attorney~~ hearing examiner may order that the testimony of a prospective witness be taken by deposition in lieu of live testimony. ~~under such conditions and terms as the hearing examiner shall set and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place~~ The hearing examiner may grant the motion if it appears probable that:

- (1) The prospective witness will be unavailable to attend or will be prevented from attending a hearing; ~~and~~
- (2) The testimony of the prospective witness is material; and
- (3) ~~The testimony of the prospective witness is necessary in order to prevent a failure of justice.~~

In the case of an expert witness, a showing of the unavailability of the expert to attend shall not be necessary for the ~~attorney~~ hearing examiner's consideration of the motion ~~of a representative~~ to take a deposition in lieu of live testimony.

(B) The testimony shall be taken under such conditions and terms as the hearing examiner shall set forth. Moreover, the hearing examiner may order the production of any designated books, papers, documents or tangible objects, so long as not privileged, at the same time and place. The representatives shall agree to the time and place for taking the deposition in lieu of live testimony. Depositions shall be conducted in the same county in which the hearing is conducted unless otherwise agreed to by the representatives. If the representatives are unable to agree, the attorney hearing examiner shall set the time or fix the place of deposition. At a deposition taken pursuant to this rule, representatives shall have the right, as at hearing, to fully examine witnesses. A deposition taken under this rule shall be filed with the board not later than one day prior to hearing, and may be offered into evidence at hearing by either representative in lieu of the prospective witness' personal appearance. The cost of preparing a transcript of any testimony taken by deposition in lieu of live testimony which is offered as evidence at the hearing shall be borne by the board. In the event of appeal, such costs shall be made a part of the cost of the hearing record. The expense of any video deposition shall be borne by the requestor.

(C) The parties shall agree to the time and place for taking the deposition in lieu of live testimony. Depositions in lieu of live testimony shall be conducted in the same county in which the hearing is conducted unless otherwise agreed to by the parties.

If the parties are unable to agree, the hearing examiner shall set the time or fix the place of deposition.

(D) At a deposition in lieu of live testimony taken pursuant to this rule, each party shall have the right, as at hearing, to fully examine witnesses.

(E) The transcript of a deposition in lieu of live testimony taken under this rule shall be offered into evidence at hearing. The cost of preparing a transcript of any testimony taken by deposition in lieu of live testimony which is submitted as evidence at the hearing shall be borne by the board.

(F) The expense of any video deposition shall be borne by the requestor.

~~(C) Any deposition or transcript of prior testimony of a witness may be used for the purpose of refreshing the recollection, contradicting the testimony or impeaching the credibility of that witness. If only a part of a deposition is offered into evidence by a representative, the opposing representative may offer any other part. Nothing in this paragraph shall be construed to permit the taking of depositions for purposes other than those set forth in paragraph (A) of this rule.~~

~~(D) A transcript of testimony and exhibits from a prior proceeding may be introduced for any purpose if that prior proceeding forms the basis for the allegations. Upon offering part of a transcript or exhibit from a prior proceeding, the offering representative may be required by the opposing representative to present any other part of the offered item which should in fairness be considered contemporaneously with it.~~

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Certification

Date

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