



Ohio Administrative Code Rule 3746-6-02 Depositions.

Effective: August 15, 2011

(A) At any time after the filing of an appeal and subject to such discovery deadlines as the commission may order, any party may take the deposition of any other party or person upon oral examination with respect to any matter within the scope of discovery set forth in rule 3746-6-01 of the Administrative Code. The attendance of witnesses and production of documents may be compelled by subpoena as provided in rule 3746-6-06 of the Administrative Code.

(B) Any party desiring to take the deposition of any person upon oral examination shall serve notice in writing to the deponent and all parties. The notice shall state the time and place for the taking of the deposition and the name and address of each person to be examined, if known, or if the name is not known, a general description sufficient for identification. If a subpoena duces tecum is to be served upon the person to be examined, a designation of the materials to be produced thereunder shall be attached to, or included in, the notice.

(C) Upon a failure of agreement as to the time and place for the taking of a deposition, an appropriate order of the commission may be obtained by the party seeking to take the deposition.

(D) If any party demonstrates he was unable with the exercise of due diligence to obtain counsel to represent him or her at the taking of a deposition, the deposition may not be used against such party.

(E) Depositions shall be recorded stenographically unless otherwise agreed to by the parties or ordered by the commission.

(F) Depositions may be taken before any person authorized to administer oaths under the laws of the jurisdiction in which the deposition is taken, or before any person appointed by the commission. Unless all of the parties expressly agree otherwise, no deposition shall be taken before any person who is a relative, employee, or attorney of any party, or a relative or employee of such attorney.

(G) The officer before whom the deposition is to be taken shall put the witness under oath or



affirmation, and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. Examination and cross-examination may proceed as permitted in commission hearings.

(H) All objections made at the time of the examination shall be noted upon the deposition by the officer. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope upon the party taking the deposition, who shall transmit them to the officer, who in turn shall propound them to the witness and record the answers verbatim.

(I) At any time during the taking of a deposition, the commission may, upon motion of any party or the deponent and upon a showing that the examination is being conducted in bad faith or in such a manner as to unreasonably annoy, embarrass, or oppress the deponent or party, order the person conducting the examination to cease taking the deposition, or limit the scope and manner of the taking of the deposition as provided in rule 3746-6-07 of the Administrative Code. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for such an order.

(J) When the testimony is fully transcribed, the deposition shall be submitted and read by the deponent, unless examination and reading are waived by the deponent and by the parties. Any changes in form or substance that the deponent desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the deponent for making the changes. The deposition shall then be signed by the deponent, unless the signing is expressly waived by the parties or the deponent is ill or cannot be found or refuses to sign. If the deposition is not signed by the deponent within thirty days after its submission, the officer shall sign it and explain the reason for the lack of signature for the record. The deposition may then be used as fully as though signed, unless on a motion to suppress, the commission holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(K) The officer shall certify on the deposition that the deponent was duly sworn and that the deposition is a true record of the statement given by the deponent.

(L) Documents and things produced for inspection during the examination of the deponent shall,



upon request of any party, be marked for identification and annexed to the deposition, except that:

(1) The person producing the materials may substitute copies to be marked for identification, if all parties are afforded a fair opportunity to verify that the copies are identical to the originals; and

(2) If the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them. The materials may then be used in the same manner as if annexed to the deposition.

(M) Depositions may be used in commission hearings to the extent permitted in civil actions in courts of record. Unless otherwise ordered for good cause shown, any depositions to be used as evidence must be filed with the commission at least one day prior to the commencement of the hearing.

(N) The notice to a party deponent may be accompanied by a request made pursuant to rule 3746-6-04 of the Administrative Code for the production of documents or tangible things at the taking of the deposition.