

## **RULE 4:16. Use Of Depositions; Objections; Effect; Errors And Irregularities**

### **4:16-1. Use of Depositions**

At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used in accordance with any of the following provisions:

- **(a)** Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness, or for any other purpose permitted by the Rules of Evidence.
- **(b)** The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing or authorized agent, or a person designated under R. 4:14-2(c) or R. 4:15-1 to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party, may be used by an adverse party for any purpose against the deponent or the corporation, partnership, association or agency.
- **(c)** Except as otherwise provided by R. 4:14-9(e), the deposition of a witness, whether or not a party, may be used by any party for any purpose, against any other party who was present or represented at the taking of the deposition or who had reasonable notice thereof if the court finds that the appearance of the witness cannot be obtained because of death or other inability to attend or testify, such as age, illness, infirmity or imprisonment, or is out of this state or because the party offering the deposition has been unable in the exercise of reasonable diligence to procure the witness's attendance by subpoena, provided, however, that the absence of the witness was not procured or caused by the offering party. The deposition of an absent but not unavailable witness may also be so used if, upon application and notice, the court finds that such exceptional circumstances exist as to make such use desirable in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.
- **(d)** If only part of a deposition is offered in evidence by a party, an adverse party may require the offering party to introduce any other part which ought in fairness be considered with the part introduced, and any party may offer any other parts.

Substitution of parties pursuant to R. 4:34 does not affect the right to use depositions previously taken; and, when an action has been brought in any court of the United States or of any state and another action involving the same subject matter is afterward maintained between the same parties or their representatives or successors in interest, all depositions lawfully taken in the former action may be used in the latter as if originally taken therefor, provided that the officer's statement required by R. 4:14-6(a) was duly filed. A deposition previously taken may also be used as permitted by the Rules of Evidence.

Note: Source-R.R. 4:16-4. Former rule deleted (see R. 4:16-4(a)) and new R. 4:16-1 adopted July 14, 1972 to be effective September 5, 1972 (formerly in R. 4:10-4); paragraph (c) amended July 21, 1980 to be effective September 8, 1980; paragraphs (a) and (c) and text amended July 26, 1984 to be effective September 10, 1984; paragraphs (c) and (d) amended July 13, 1994 to be effective September 1, 1994.

### **4:16-2. Objections to Admissibility**

Subject to the provisions of R. 4:16-4(c), objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

Note: Source-R.R. 4:16-5. Former rule deleted (see R. 4:16-4(b)) and new R. 4:16-2 adopted July 14, 1972 to be effective September 5, 1972 (formerly in R. 4:10-5).

### 4:16-3. Effect of Taking or Using Deposition

A person does not become a party's witness for any purpose merely because that party has taken that person's deposition. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by that party or by any other party.

Note: Source-R.R. 4:16-6. Former rule deleted (see R. 4:16-4(c)) and new R. 4:16-3 adopted July 14, 1972 to be effective September 5, 1972 (formerly in R. 4:10-6); amended July 13, 1994 to be effective September 1, 1994.

### 4:16-4. Effect of Errors and Irregularities in Depositions

- **(a) As to Notice.** All errors and irregularities in the notice for taking a deposition are waived unless at least 3 days before the time fixed for examination, or within such time as the court fixes by order, written objection is served upon the party giving the notice.
- **(b) As to Disqualification of Officer.** Objection to taking a deposition because of disqualification of the officer before whom or the person by whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.
- **(c) As to Taking of Deposition.**
  - **(1) Objections Not Waived.** Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.
  - **(2) Objections Waived.** Except as otherwise provided by R. 4:14-3(c), errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented are waived unless timely objection thereto is made at the taking of the deposition. Objections to the form of written questions submitted under R. 4:15 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or redirect questions or, if the objection is as to recross questions, then within 5 days after service thereof.
- **(d) As to Completion and Return of Deposition.** Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

Note: Source-R.R. 4:22-1, 4:22-2, 4:22-3(a) (b) (c). Paragraph (d) amended July 14, 1972 to be effective September 5, 1972 (paragraphs (a)(b)(c) formerly R. 4:16-1, 4:16-2, 4:16-3); paragraph (c)(2) amended July 5, 2000 to be effective September 5, 2000.