

## § 904.241

upon, in support of any claim or defense, testimony by such party, officer, or agent, or the documents or other evidence;

(4) Rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(5) Strike part or all of a pleading (except a request for hearing), a motion or other submission by the party, concerning the matter or matters covered by the order or subpoena.

[52 FR 10325, Mar. 31, 1987, as amended at 58 FR 58486, Nov. 2, 1993; 61 FR 54731, Oct. 22, 1996]

### § 904.241 Depositions.

(a) *Notice.* If a motion for deposition is granted, and unless otherwise ordered by the Judge, the party taking the deposition of any person must serve on that person, and each other party, written notice at least 15 days before the deposition would be taken (or 25 days if the deposition is to be taken outside the United States). The notice must state the name and address of each person to be examined, the time and place where the examination would be held, the name and mailing address of the person before whom the deposition would be taken, and the subject matter about which each person would be examined.

(b) *Taking the deposition.* Depositions may be taken before any officer authorized to administer oaths by the law of the United States or of the place where the examination is to be held, or before a person appointed by the Judge. Each deponent will be sworn, and any party has the right to cross-examine. Objections are not waived by failure to make them during the deposition unless the ground of the objection is one that might have been removed if presented at that time. The deposition will be recorded, transcribed, signed by the deponent, unless waived, and certified by the officer before whom the deposition was taken. All transcription costs associated with the testimony of a deponent will be borne by the party seeking the deposition. Each party will bear its own expense for any copies of the transcript. See also § 904.252(c).

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(c) *Alternative deposition methods.* By order of the Judge, the parties may use other methods of deposing parties or witnesses, such as telephonic depositions or depositions upon written questions. Objections to the form of written questions are waived unless made within five days of service of the questions.

(d) *Use of depositions at hearing.* (1) At hearing any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then testifying, may be used against any party who was present or represented at the taking of the deposition, or had reasonable notice.

(2) The deposition of a witness may be used by any party for any purpose if the Judge finds:

(i) That the witness is unable to attend due to death, age, health, imprisonment, disappearance or distance from the hearing site; or

(ii) That exceptional circumstances make it desirable, in the interest of justice, to allow the deposition to be used.

(3) If only part of a deposition is offered in evidence by a party, any party may introduce any other part.

### § 904.242 Interrogatories to parties.

(a) *Use at hearing.* If ordered by the Judge, any party may serve upon any other party written interrogatories. Answers may be used at hearing in the same manner as depositions under § 904.241(d).

(b) *Answers and objections.* Answers and objections must be made in writing under oath, and reasons for the objections must be stated. Answers must be signed by the person making them and objections by the attorney making them. Unless otherwise ordered, answers and objections must be served on all parties within 20 days after service of the interrogatories.

(c) *Option to produce records.* Where the answer to an interrogatory may be ascertained from the records of the party upon whom the interrogatory is served, it is sufficient to specify such records and afford the party serving the interrogatories an opportunity to examine them.