

§ 1025.34

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or sampling any designated object or operation within the scope of §1025.31(c).

(b) *Procedure for request.* The request may be served at any time after the filing of an answer without leave of the Presiding Officer. The request shall set forth the items to be inspected, either by individual item or by category, and shall describe each item or category with reasonable particularity. The request shall specify a reasonable time, place, and manner for making the inspection and performing the related acts.

(c) *Procedure for response.* The party upon whom the request is served shall respond in writing within thirty (30) days after service of the request. The Presiding Officer may allow a shorter or longer time for response. The response shall state, with respect to each item or category requested, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to only part of an item or category, that part shall be specified. The party submitting the request may move for an order under §1025.36 with respect to any objection to or other failure to respond to the request or any part thereof, or to any failure to permit inspection as requested.

(d) *Persons not parties.* This section does not preclude an independent action against a person not a party for production of documents and things.

§ 1025.34 Requests for admission.

(a) *Procedure for request.* A party may serve upon any other party a written request for the admission, for the purposes of the pending proceedings only, of the truth of any matters within the scope of §1025.31(c) set forth in the request that relate to statements of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of the Presiding Officer, be served upon any party after filing of the answer. Each matter about

which an admission is requested shall be separately set forth.

(b) *Procedure for response.* The matter about which an admission is requested will be deemed admitted unless within thirty (30) days after service of the request, or within such shorter or longer time as the Presiding Officer may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or the party's representative and stating the reasons for the objections. The answer shall specifically admit or deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission. When good faith requires that a party qualify an answer or deny only a part of the matter to which an admission is requested, the party shall specify the portion that is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny a fact unless the party states that he/she has made reasonable inquiry and that the information known or readily available to him/her is insufficient to enable him/her to admit or deny a fact. A party who considers that a matter to which an admission has been requested presents a genuine issue for hearing may not, on that ground alone, object to the request but may deny the matter or set forth reasons why the party cannot admit or deny it. The party who has requested an admission may move to determine the sufficiency of any answer or objection in accordance with §1025.36 of these Rules. If the Presiding Officer determines that an answer does not comply with the requirements of this section, he/she may order that the matter be deemed admitted or that an amended answer be served.

(c) *Effect of admission.* Any matter admitted under this section is conclusively established unless the Presiding Officer on motion permits withdrawal or amendment of such admission. The Presiding Officer may permit withdrawal or amendment when the presentation of the merits of the action will be served thereby and the party who

obtained the admission fails to satisfy the Presiding Officer that withdrawal or amendment will prejudice that party in maintaining an action or defense on the merits. Any admission made by a party under this section is for the purposes of the pending adjudication only and is not an admission by that party for any other purposes, nor may it be used against that party in any other proceedings.

§ 1025.35 Depositions upon oral examination.

(a) *When depositions may be taken.* At any time after the first prehearing conference, upon leave of the Presiding Officer and under such terms and conditions as the Presiding Officer may prescribe, any party may take the deposition of any other party, including the agents, employees, consultants, or prospective witnesses of that party at a place convenient to the deponent. The attendance of witnesses and the production of documents and things at the deposition may be compelled by subpoena as provided in §1025.38 of these rules.

(b) *Notice of deposition—(1) Deposition of a party.* A party desiring to take a deposition of another party to the proceedings shall, after obtaining leave from the Presiding Officer, serve written notice of the deposition on all other parties and the Presiding Officer at least ten (10) days before the date noticed for the deposition. The notice shall state:

(i) The time and place for the taking of the deposition;

(ii) The name and address of each person to be deposed, if known, or if the name is not known, a general description sufficient to identify him/her; and

(iii) The subject matter of the expected testimony. If a subpoena *duces tecum* is to be served on the person to be deposed, the designation of the materials to be produced, as set forth in the subpoena, shall be attached to or included in the notice of deposition.

(2) *Deposition of a non-party.* A party desiring to take a deposition of a person who is not a party to the proceedings shall make application for the issuance of a subpoena, in accordance with §1025.38 of these rules, to compel

the attendance, testimony, and/or production of documents by such non-party. The party desiring such deposition shall serve written notice of the deposition on all other parties to the proceedings, after issuance of the subpoena. The date specified in the subpoena for the deposition shall be at least twenty (20) days after the date on which the application for the subpoena is made to the Presiding Officer.

(3) *Opposition to notice.* A person served with a notice of deposition may oppose, in writing, the taking of the deposition within five (5) days of service of the notice. The Presiding Officer shall rule on the notice and any opposition and may order the taking of all noticed depositions upon a showing of good cause. The Presiding Officer may, for good cause shown, enlarge or shorten the time for the taking of a deposition.

(c) *Persons before whom depositions may be taken.* Depositions may be taken before any person who is authorized to administer oaths by the laws of the United States or of the place where the examination is held. No deposition shall be taken before a person who is a relative, employee, attorney, or representative of any party, or who is a relative or employee of such attorney or representative, or who is financially interested in the action.

(d) *Taking of deposition—(1) Examination.* Each deponent shall testify under oath, and all testimony shall be recorded. All parties or their representatives may be present and participate in the examination. Evidence objected to shall be taken subject to any objection. Objections shall include the grounds relied upon. The questions and answers, together with all objections made, shall be recorded by the official reporter before whom the deposition is taken. The original or a verified copy of all documents and things produced for inspection during the examination of the deponent shall, upon a request of any party present, be marked for identification and made a part of the record of the deposition.

(2) *Motion to terminate or limit examination.* At any time during the deposition, upon motion of any party or of the deponent, and upon a showing that the examination is being conducted in