



Ohio Administrative Code Rule 4906-2-18 Depositions.

Effective: December 11, 2015

(A) Any party to a board proceeding may take the testimony of any other party or person, other than a member of the board staff, by deposition upon oral examination with respect to any matter within the scope of discovery set forth in rule 4906-2-14 of the Administrative Code. The attendance of witnesses and production of documents may be compelled by subpoena as provided in rule 4906-2-23 of the Administrative Code.

(B) Any party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to the deponent, to all parties, and to the board. The notice shall state the time and place for taking 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) If any party shows that he or she 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.

(D) The board or the administrative law judge may, upon motion, order that a deposition be recorded by other than stenographic means, in which case the order shall designate the manner of recording the deposition, and may include provisions to assure that the recorded testimony will be accurate and trustworthy. If such an order is made, any party may arrange to have a stenographic transcription made at his or her own expense.

(E) A party may, in the notice and in a subpoena, name a corporation, partnership, association, government agency, or municipal corporation and designate with reasonable particularity the matters on which examination is requested. The organization so named shall choose one or more of its officers, agents, employees, or other persons duly authorized to testify on its behalf, and shall set forth, for each person designated, the matters on which he or she will testify. The persons so



designated shall testify as to matters known or reasonably available to the organization.

(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 board or the administrative law judge. 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 person before whom the deposition is to be taken shall put the witness on oath or affirmation, and shall personally, or by someone acting under his or her direction and in his or her presence, record the testimony of the witness. Examination and cross-examination may proceed as permitted in board hearings. The testimony shall be recorded stenographically or by any other means ordered under paragraph (D) of this rule. If requested by any of the parties, the testimony shall be transcribed at the expense of the party making the request.

(H) All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings shall be noted by the officer upon the deposition. 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 board or the administrative law judge 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 may limit the scope and manner of taking the deposition as provided in rule 4906-2-21 of the Administrative Code. Upon demand of the objecting party or deponent, the taking of the depositions shall be suspended for the time necessary to make a motion for such an order.

(J) If and when the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him or her, unless such examination and reading are expressly



waived by the witness and the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making the changes. The deposition shall then be signed by the witness unless the signing is expressly waived by the parties or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within ten days after its submission to him or her, the officer shall sign it and state on the record the fact of the waiver or the illness or absence of the witness, or the fact of the refusal to sign together with the reason, if any, given for such refusal. The deposition may then be used as fully as though signed, unless the administrative law judge upon motion to suppress, 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 witness was duly sworn by him or her and that the deposition is a true record of the testimony given by the witness. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(L) Documents and things produced for inspection during the examination of the witness 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 the copies by comparison with the originals.

(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, and the materials may then be used in the same manner as if annexed to deposition.

(M) Depositions may be used in board hearings to the same 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 board at least three days prior to the commencement of the hearing. A deposition need not be prefiled if used to impeach the testimony of a witness at hearing.

(N) The notice to a party deponent may be accompanied by a request made in compliance with rule 4906-2-19 of the Administrative Code for the production of documents or tangible things at the taking of the deposition.