

Proposed Change to Rule 4:5(c) Governing Objections Made During Depositions Upon Oral Examination

May 2011

Draft Rule Amendment Published for Comment

Set forth below is a draft rule amendment approved by the Advisory Committee on Rules of Court, a committee of the Judicial Council of Virginia. It has not been submitted to, considered by, or approved by the Judicial Council of Virginia or the Supreme Court of Virginia. The Advisory Committee on Rules of Court seeks comment on this draft rule amendment.

Background: In response to a proposal submitted by a committee of the Boyd-Graves Conference of the Virginia Bar Association, the Advisory Committee considered the issue of how the Rules address objections to form made during deposition and the absence of a provision of the Rules of Court governing speaking objections. The proposed amendment to Rule 4:5(c)(2), interlineated below with added language underlined, is the product of the Advisory Committee's consideration of this issue.

Comments on this draft rule should be sent by August 26, 2011 to:

Advisory Committee on Rules of Court
c/o Steven Dalle Mura
Office of the Executive Secretary
Supreme Court of Virginia
100 North Ninth St.
Richmond, VA 23219

OR via email with the subject line: "comment on Rule 4:5" to:

proposedrules@courts.state.va.us

Rule 4:5. Depositions Upon Oral Examination.

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(c) *Examination and Cross-Examination; Record of Examination; Oath; Objections.* Examination and cross-examination of witnesses may proceed as permitted at the trial. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. If requested by one of the parties, the testimony shall be transcribed.

All objections made at 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. Any objection must be stated concisely in a nonargumentative and nonsuggestive manner. 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 on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

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