

1 **NRCP 28 – Proposed**
2 **(Adopt Federal Rule)**

3 **Rule 28. Persons Before Whom Depositions May Be Taken**

4 **(a) Within the United States.**

5 (1) **In General.** Within the United States or a territory or insular
6 possession subject to United States jurisdiction, a deposition must be taken before:

7 (A) an officer authorized to administer oaths either by federal law
8 or by the law in the place of examination; or

9 (B) a person appointed by the court where the action is pending to
10 administer oaths and take testimony.

11 (2) **Definition of “Officer.”** The term “officer” in Rules 30, 31, and 32
12 includes a person appointed by the court under this rule or designated by the parties
13 under Rule 29(a).

14 **(b) In a Foreign Country.**

15 (1) **In General.** A deposition may be taken in a foreign country:

16 (A) under an applicable treaty or convention;

17 (B) under a letter of request, whether or not captioned a “letter
18 rogatory”;

19 (C) on notice, before a person authorized to administer oaths either
20 by federal law or by the law in the place of examination; or

21 (D) before a person commissioned by the court to administer any
22 necessary oath and take testimony.

23 (2) **Issuing a Letter of Request or a Commission.** A letter of
24 request, a commission, or both may be issued:

1 (A) on appropriate terms after an application and notice of it; and

2 (B) without a showing that taking the deposition in another
3 manner is impracticable or inconvenient.

4 (3) **Form of a Request, Notice, or Commission.** When a letter of
5 request or any other device is used according to a treaty or convention, it must be
6 captioned in the form prescribed by that treaty or convention. A letter of request may
7 be addressed “To the Appropriate Authority in [name of country].” A deposition
8 notice or a commission must designate by name or descriptive title the person before
9 whom the deposition is to be taken.

10 (4) **Letter of Request—Admitting Evidence.** Evidence obtained in
11 response to a letter of request need not be excluded merely because it is not a
12 verbatim transcript, because the testimony was not taken under oath, or because of
13 any similar departure from the requirements for depositions taken within the United
14 States.

15 (c) **Disqualification.** A deposition must not be taken before a person who is
16 any party’s relative, employee, or attorney; who is related to or employed by any
17 party’s attorney; or who is financially interested in the action.