

RULE 28. Persons Before Whom Depositions May be Taken

(A) Depositions within state. Depositions may be taken in this state before: a person authorized to administer any oath by the laws of this state, a person appointed by the court in which the action is pending, or a person agreed upon by written stipulation of all the parties.

(B) Depositions outside state. Depositions may be taken outside this state before: a person authorized to administer oaths in the place where the deposition is taken, a person appointed by the court in which the action is pending, a person agreed upon by written stipulation of all the parties, or, in any foreign country, by any consular officer of the United States within his consular district.

(C) Disqualification for interest.

Unless the parties agree otherwise as provided in Civ. R. 29, depositions shall not be taken before a person who:

- (1) is a relative or employee of or attorney for any of the parties, or
- (2) is a relative or employee of an attorney for any of the parties, or
- (3) is financially interested in the action.

(D) Prohibited contracts.

(1) Any blanket contract for private court reporting services, not related to a particular case or reporting incident, shall be prohibited between a private court reporter or any other person with whom a private court reporter has a principal and agency relationship, and any attorney, party to an action, party having a financial interest in an action, or any entity providing the services of a shorthand reporter.

(2) “Blanket contract” means a contract under which a court reporter, court recorder, or court reporting firm agrees to perform all court reporting or court recording services for a client for two or more cases at a rate of compensation fixed in the contract.

(3) Negotiating or bidding reasonable fees, equal to all parties, on a case-by-case basis is not prohibited.

(4) Division (D) of this rule does not apply to the courts or the administrative tribunals of this state.

[Effective: July 1, 1970; July 1, 2001.]

Staff Note (July 1, 2001 Amendment)

Civil Rule 28 Persons Before Whom Depositions May Be Taken **Civil Rule 28(D) Prohibited contracts**

The amendment effective July 1, 2001 added division (D), Prohibited contracts. This rule was amended in response to communications from members of the bench and bar indicating that certain types of long-term financial arrangements between court reporters, court reporting firms, or other firms and litigants or other entities have given rise to concerns about the appearance of or potential for differential treatment of parties to an action. The appearance of impartiality and the existence of impartiality are no less important for those officers who take depositions than for judicial officers and other persons whose responsibilities are integral to the administration of justice.

The general prohibition of division (D) does not apply to situations where lower fees may be negotiated, provided the fees are the same for all parties and are negotiated on a case-by-case basis [division (D)(3)]. Also, the prohibition does not extend to governmental entities, which may be required by law to obtain court reporting services on a long-term basis through competitive bidding. See, e.g., sections 125.05(B) and 125.07 of the Revised Code.

The prohibition in division (D), like the pre-existing prohibitions in division (C), is enforceable by the court in which the underlying action is pending. Enforceability is implicitly recognized by Civ. R. 32(D)(2), which requires reasonable diligence of a party in raising a disqualification issue. See *Berwald v. Ford Motor Co.*, 1982 WL 5337, No. 44064 (8th Dist. Ct. App., Cuyahoga, May 6, 1982) (objection held waived); J. McCormac, *Ohio Civil Rules Practice*, section 10.37 at 268 (2d ed. 1992) (noting that “[c]onceivably, this objection could be made at trial if it were not discovered until that time that the officer taking the deposition was disqualified for interest under Civil Rule 28(C) and there had been no previous waiver or stipulation”). Trial courts also have extensive inherent power to control discovery. See, e.g., *State ex rel. Abner v. Elliott*, 85 Ohio St.3d 11, 16 (1999); *State ex rel. Grandview Hosp. & Med. Ctr.*, 51 Ohio St. 3d 94, 95 (1990) (citing Staff Note to Civ. R. 26(C) and Civ. R. 37); *State ex rel. Pfeiffer v. Common Pleas Ct. of Lorain Cty.*, 13 Ohio St. 2d 133, 136-37 (1968) (noting “the inherent power of courts to do all things necessary to the administration of justice and to protect its own powers and processes and the rights of those who invoke its processes” which “inheres in the constitutional grant of judicial power to the courts”).

Pursuant to the effective date provisions of Civ. R. 86(Y), Civ. R. 28(D) will apply only to (1) depositions taken in actions brought after July 1, 2001, and (2) in actions pending on July 1, 2001, to depositions taken on and after July 1, 2001.

In division (C), grammatical and structural revisions were made. No substantive amendment to division (C) was intended.