

Deposing a minor where the child's parent or other party objects--

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Oftentimes a minor may be a crucial witness to an accident or other event which is the subject of litigation. As such, one or more of the parties may want to take the child's deposition. The child's parent(s), however, may not want the child to be deposed for fear that the child will be harmed in some manner emotionally by either reliving a traumatic event or simply being in a room full of intimidating adults asking heated questions. Courts are then faced with the competing interests of the child and the need for discovering relevant evidence. Most courts that have considered the issue have found that the child can be deposed but that the trial court may set up certain restrictions and guidelines as to the manner, time, place etc. of the deposition to protect the child's well-being.

The Mississippi Supreme Court, for instance, reversed a trial court's entry of a protective order prohibiting the deposition of a minor victim of a crime and another minor who was a witness to that crime. It stated, "The fact that a witness is an 'alleged minor victim of a crime' alone, does not constitute sufficient grounds to deny a party the right to depose that witness." *Blossom v. Blossom*, 66 So. 3d 124, 127 (Miss. 2011). The Court said the trial court should have conducted an analysis under Rule 26(d) of the Mississippi Rules of Civil Procedure which provides as follows:

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending, or in the case of a deposition the court that issued a subpoena therefor, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (1) that the discovery not be had;
- (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

- (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
- (5) that discovery be conducted with no one present except persons designated by the court;
- (6) that a deposition after being sealed to be opened only by order of the court;
- (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;
- (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court;
- (9) the court may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, oppression or undue burden or expense, including provision for payment of expenses attendant upon such deposition or other discovery device by the party seeking same.

Other courts have ruled similarly. See *Crunk v. San Antonio Indep. Sch. Dist.*, 2002 U.S. Dist. LEXIS 25920, *2 (W.D. Tex. 2002) (“In ordering special deposition procedures, the court is shielding the emotional well-being of the [minor] deponent while trying to uphold the other party's right to depose witnesses.”); *Arassi v. Weber-Stephen Prods. LLC*, 2014 U.S. Dist. LEXIS 49032, *6-7, 2014 WL 1385336 (E.D. Wis. 2014) (“[I] am not persuaded that the plaintiffs have shown with specificity that deposing the children would be irreparably harmful to them. The cursory (perhaps, understandably so) and conclusory letters from the two mental health providers disclose very little on which I can make a specific finding of harm. Beyond that, plaintiffs have not shown that there are no alternatives other than quashing the [subpoena] to address any potential harm to the children.... In other words, I am not persuaded that measures and limitations cannot be fashioned to protect the children from any irreparable harm.”);

The Court in *Yelland v. Abington Heights Sch. Dist.*, 2017 U.S. Dist. LEXIS 150789, *4-5, 2017 WL 4122465 (M.D. Pa. 2017) noted that “The Federal Rules of Civil Procedure do not distinguish minors from adults for depositions. Rule 30(a)(1) provides,

'[a] party may, by oral questions, depose any person, including a party, without leave of court except as provided in Rule 30(a)(2).'" The Court further explained that "[e]ven if a parent objects to the deposition of a non-party minor child, courts have allowed the testimony provided it is: (a) relevant; (b) not unreasonably duplicative; and (c) unlikely to cause the minor irreparable harm." See also *Galbreath v. Braley*, 318 Ga. App. 111, 733 S.E.2d 412, 413-15 (Ga. Ct. App. 2012) (the Court of Appeals of Georgia vacated a protective order prohibiting the petitioner from deposing a thirteen-year-old girl who was not a party to the case and remanded the case to the trial court to determine whether and how the deposition could proceed without exacerbating the child's psychological harm. The court suggested that the trial court consider imposing reasonable restrictions on the deposition, such as the venue of the deposition, its length, the possibility of recesses, those who might attend, and the ability to suspend the deposition in the event of an emergency); *Estate of Chen v. Lingting Ye*, 208 A.3d 1168, 1174 (R.I. 2019) ("[I]t is our opinion that the hearing justice erred when he quashed [the minor's] oral deposition and required plaintiffs to depose [the minor] via written questions.... This case is therefore remanded to the Superior Court so that plaintiffs may conduct an oral deposition of [the minor]. However, the hearing justice may impose reasonable restrictions on the oral deposition, such as setting a time limit on the deposition, allowing frequent recesses, and/or permitting a parent of [the minor] to be present during the deposition."); *In re Transit Mgmt.*, 761 So. 2d 1270, 1271 (La. 2000) (Allowing deposition of seven year-old child and noting that "[w]e share the district court's concern that a deposition of a child of Michael's age could be stressful. However, the district court abused its discretion by prohibiting relator from taking Michael's

deposition. The trial court may consider alternative methods to reduce the level of stress to the child while at the same time preserving relator's right to obtain information necessary to its defense.”).

As the foregoing cases illustrate, in all but the most extreme cases, courts will allow a minor who has relevant knowledge to be deposed. However, the judge may (and typically does) set limitations on the deposition to protect the child.