

RULE 1.390. DEPOSITIONS OF EXPERT WITNESSES

(a) Definition. The term “expert witness” as used herein applies exclusively to a person duly and regularly engaged in the practice of a profession who holds a professional degree from a university or college and has had special professional training and experience, or one possessed of special knowledge or skill about the subject upon which called to testify.

(b) Procedure. The testimony of an expert or skilled witness may be taken at any time before the trial in accordance with the rules for taking depositions and may be used at trial, regardless of the place of residence of the witness or whether the witness is within the distance prescribed by rule 1.330(a)(3). No special form of notice need be given that the deposition will be used for trial.

(c) Fee. An expert or skilled witness whose deposition is taken shall be allowed a witness fee in such reasonable amount as the court may determine. The court shall also determine a reasonable time within which payment must be made, if the deponent and party cannot agree. All parties and the deponent shall be served with notice of any hearing to determine the fee. Any reasonable fee paid to an expert or skilled witness may be taxed as costs.

(d) Applicability. Nothing in this rule shall prevent the taking of any deposition as otherwise provided by law.

Committee Notes

1972 Amendment. This rule has caused more difficulty in recent years than any other discovery rule. It was enacted as a statute originally to make the presentation of expert testimony less expensive and less onerous to the expert and to admit the expert’s deposition at trial regardless of the expert’s residence. In spite of its intent, courts seem determined to misconstrue the plain language of the rule and cause complications that the committee and the legislature did not envisage. See *Owca v. Zemicki*, 137 So. 2d 876 (Fla. 2d DCA 1962); *Cook v. Lichtblau*, 176 So. 2d 523 (Fla. 2d DCA 1965); and *Bondy v. West*, 219 So. 2d 117 (Fla. 2d DCA 1969). The committee hopes the amendment to subdivision (b) will show that the intent of the rule is to permit a deposition taken of an expert in conformity with any rule for the taking of a deposition to be admitted, if otherwise admissible under the rules of evidence, regardless of the residence of the expert. In short, the rule eliminates the necessity of any of the requirements of rule 1.330(a)(3) when the deposition offered is that of an expert.

1988 Amendment. Subdivision (c) has been amended to clarify the procedure to be used in paying an expert witness for his or her appearance at a deposition.

