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Taking of Depositions Conditioned upon Payment of Opposing Attorney's Expenses

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Most federal and state appellate courts have established guidelines for trial courts to follow in ordering the advancement of deposition expenses. Courts will order the deposing party to advance the opposing attorney's expenses in a variety of circumstances. *Vanderpool* presented Missouri courts with their first opportunity to address such an order.

In *Vanderpool*, the Missouri Court of Appeals for the Western District upheld the trial court's advancement order. The trial court had conditioned the taking of a deposition upon the deposing party advancing the opposing attorney's expenses of attending the deposition. Although the court of appeals found the trial court's order to be clearly authorized under Missouri Supreme Court Rule 56.01(c), its decision failed to satisfactorily address the extent of the trial court's discretion in ordering advancement.

*Vanderpool* gave notice of the taking of depositions of witnesses in Tulsa, Oklahoma, and Dallas, Texas. Defendants Taylor then sought a protective order, asking that the court either stay the taking of the depositions or permit the depositions only on the condition that Vanderpool pay the expenses and fees of the Taylors' attorneys in attending the depositions.

After a hearing on the motion, the trial judge announced his intention to enter an order conditioning the taking of the depositions upon Vanderpool supplying airline tickets to the Taylors' attorneys to and from the site of the depositions, plus two hundred dollars per diem for expenses. Vanderpool asked the court of appeals for a writ of prohibition to prevent entry of the protective order, alleging that the trial judge did not have authority to order the payment of expenses.

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1. 628 S.W.2d 414 (Mo. App., W.D. 1982).
2. Missouri Supreme Court Rule 56.01(c) provides:
   Protective orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court 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: . . . (2) that the discovery may be had only on specified terms and conditions . . . .
3. 628 S.W.2d at 415.
4. *Id.*
5. *Id.*
6. *Id.* at 415-16.
The court of appeals denied the writ of prohibition.\(^7\) The court held that the Taylors, as movants in the trial court, had the initial burden to demonstrate facts sufficient to allow entry of a protective order.\(^8\) Once the trial court entered its order and Vanderpool initiated the prohibition proceeding, the burden shifted to Vanderpool as petitioning party to show that the trial court had exceeded its jurisdiction.\(^9\) The court of appeals ruled that Vanderpool failed to meet this burden.\(^10\)

The court of appeals held that Rule 56.01(c) gives the trial court authority to order the advancement of expenses as a condition precedent to the taking of a deposition.\(^11\) The court stated that decisions under the parallel federal rule\(^12\) and similar state rules\(^13\) clearly recognized the trial court's power.\(^14\) The court pointed out that Vanderpool challenged only the authority of the trial court and not the adequacy of the evidence upon which the order was based. Therefore, no basis existed upon which the court of appeals could overturn the trial court's order.\(^15\)

In the dissenting opinion, Judge Pritchard stated that the court of appeals should determine for itself whether a factual basis existed for the trial court's order.\(^16\) Judge Pritchard felt that the majority had approved the advancement of expenses upon only the motion therefor; he believed advancement should not have been approved without a review of the evidence.\(^17\) He also disputed the majority's statement that decisions under similar federal and state rules clearly establish the trial court's power to

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7. Id. at 417.
8. Id. at 416.
9. Id. The court of appeals also held that the burden on Vanderpool included overcoming the presumption of right action in favor of the trial court's ruling. The court stated that the presumption controlled in the absence of any showing to the contrary by Vanderpool. Id. at 417. The dissent contended that the presumption of right action should not be applied without evidence to support a finding of "annoyance, embarrassment, oppression, or undue burden or expense" to the opposing party. Id. at 418 (Pritchard, J., dissenting).
10. 628 S.W.2d at 417.
11. Id. at 416.
12. FED. R. CIV. P. 26(c). The federal rule served as the model for Missouri Supreme Court Rule 56.01(c). See MO. SUP. CT. R. 56 committee notes.
13. See, e.g., ALA. R. CIV. P. 26(c); KAN. R. CIV. P. 60-226(c); N.C. GEN. STAT. § 1A-1, Rule 26(c) (Supp. 1979).
14. 628 S.W.2d at 415.
15. Id. at 416.
16. Id. at 418-19 (Pritchard, J., dissenting). The dissent suggested that the court of appeals should order a record of the trial court action to be filed under the authority of Missouri Supreme Court Rule 97.01 or 81.12. 628 S.W.2d at 418 (Pritchard, J., dissenting). Judge Clark, in the concurring opinion, noted that there was no precedent for this procedure in a case of extraordinary remedy and that a record of the trial court action probably did not exist. Id. at 418 (Clark, J., concurring).
17. Id. at 419-20 (Pritchard, J., dissenting).
order the advancement of expenses.\textsuperscript{18}

The court of appeals seems correct in its holding that the trial court has the authority to order the advancement of expenses, for Rule 56.01(c) grants Missouri courts broad discretion in establishing conditions upon which a deposition may be taken.\textsuperscript{19} Other federal and state courts also recognize the broad discretion given to the trial court.\textsuperscript{20} Nevertheless, the dissent in Vanderpool correctly points out that the trial court's discretion is not unlimited.\textsuperscript{21}

Rule 56.01(c) and other similar state rules require a showing of good cause before an order will be issued,\textsuperscript{22} and some courts have noted this requirement as a limitation on the discretion of the trial court.\textsuperscript{23} In Madison v. Travelers Insurance Co.,\textsuperscript{24} cited by both the majority\textsuperscript{25} and the dissent\textsuperscript{26} in Vanderpool, the Louisiana Supreme Court recognized the broad discretion of the trial court to issue an order advancing expenses, but the majority also held that such an order must be based upon a showing of reasonableness and good cause.\textsuperscript{27}

The federal rule and similar state rules also require that an advancement order protect a person from "annoyance, embarrassment, oppression, or undue burden or expense."\textsuperscript{28} Several courts require a showing of unu-

\textsuperscript{18} Id. at 419 (Pritchard, J., dissenting). Judge Pritchard emphasized that trial courts had not been given absolute power to order the advancement of deposition expenses. \textit{Id.} at 419 (Pritchard, J., dissenting).

\textsuperscript{19} State ex rel. Naes v. Hart, 548 S.W.2d 870, 873 (Mo. App., St. L. 1977).

\textsuperscript{20} The leading case is Gibson v. International Freighting Corp., 8 F.R.D. 487 (E.D. Pa. 1947), aff'd, 173 F.2d 591 (3d Cir.), cert. denied, 338 U.S. 832 (1949). In \textit{Gibson}, the district court held that the taking of a deposition to be offered as evidence at trial and scheduled at a great distance from the forum could be conditioned upon the deposing party advancing the travel expenses of the opposing party's attorney. The court stated that "the matter is entirely within the Court's discretion, to be exercised with regard to the particular circumstances of the case." 8 F.R.D. at 488. For other decisions recognizing the broad discretion of the trial court, see Thompson v. Sun Oil Co., 523 F.2d 647, 650 (8th Cir. 1975); Leist v. Union Oil Co., 82 F.R.D. 203, 204 (E.D. Wis. 1979); Terry v. Modern Woodmen, 57 F.R.D. 141, 143 (W.D. Mo. 1972); Rogers v. Fenton, 115 Ariz. 217, 218, 564 P.2d 906, 907 (Ct. App. 1977); Madison v. Travelers Ins. Co., 308 So. 2d 784, 787 (La. 1975).

\textsuperscript{21} 628 S.W.2d at 419 (Pritchard, J., dissenting).

\textsuperscript{22} See note 2 supra; see also ALA. R. CIV. P. 26(c); KAN. R. CIV. P. 60-226(c); N.C. GEN. STAT. § 1A-1, Rule 26(c) (Supp. 1979).


\textsuperscript{24} 308 So. 2d 784 (La. 1975).

\textsuperscript{25} 628 S.W.2d at 415.

\textsuperscript{26} \textit{Id.} at 419 (Pritchard, J., dissenting).

\textsuperscript{27} 308 So. 2d at 787.

\textsuperscript{28} See FED. R. CIV. P. 26(c); ALA. R. CIV. P. 26(c); KAN. R. CIV. P. 60-226(c); MO. SUP. CT. R. 56.01(c); N.C. GEN. STAT. § 1A-1, Rule 26(c) (Supp. 1979).
usual or impelling circumstances before an order will be issued to advance expenses. The majority in Vanderpool, however, does not mention any limitation upon the discretion of the trial court; the court of appeals goes no further than to recognize the trial court's power to advance expenses.

The Vanderpool court also does not address the more specific factors considered by some courts before expenses will be advanced. The dissent points out that some federal district courts have adopted local court rules that authorize the court to order advancement of the opponent's expenses when the movant schedules a deposition more than a certain distance from the forum. More than forty years ago, the United States District Court for the Southern District of New York adopted a rule authorizing the court to require the deposing party to advance expenses when a deposition was to take place more than one hundred miles from the courthouse. The court has not been hesitant to apply this rule, but in Robbins v. Abrams, the New York court emphasized that application of the rule is discretionary rather than mandatory.

Such a rule has been adopted in only a minority of courts, and neither the Missouri state courts nor the federal district courts in Missouri have adopted such a rule. In jurisdictions that have not adopted such rules, expenses have been advanced when the court finds the deposition will be held at an inconvenient distance from the forum.


30. 628 S.W.2d at 416.

31. Id. at 419 (Pritchard, J., dissenting).

32. S.D.N.Y. Civ. R. 16(a).


34. 79 F.R.D. 600 (S.D.N.Y. 1978).

35. Id. at 602.

36. See E.D.N.Y. Civ. R. 5(a); DEL. R. CIV. P. 30(h).

37. The dissent in Vanderpool stated that "there is no local rule . . . in this case, but it should not be assumed that one could be adopted because it might infringe upon the Supreme Court's rulemaking power." 628 S.W.2d at 419 (Pritchard, J., dissenting).

The depositions at issue in Vanderpool were not depositions of any party to the action, but the deposition of an opposing party is a factor considered by some courts in the advancement of expenses. For example, several courts have established a general rule that when the defendant seeks to depose the plaintiff, the plaintiff may be required to travel without reimbursement to the forum for the deposition. Some courts have eased their application of this rule and allowed the plaintiff to be deposed outside the forum when special circumstances make a deposition at the forum a burden.

Even in courts that follow this general rule, a party is not entitled as of right to depose all witnesses at the forum. Several courts require that a party's preference for deposing at the forum be weighed against the burden to the opposing party or witness. This balancing test was established in for deposition of one doctor not previously listed as a witness); Clair v. Philadelphia Storage Battery Co., 27 F. Supp. 777, 778 (E.D. Pa. 1939) (deposition ordered held in most convenient location).

39. See Detweiler Bros., Inc. v. John Graham & Co., 412 F. Supp. 416, 422 (E.D. Wash. 1976) (rule that plaintiff will be required to make himself available for examination in district in which he has brought suit is also applicable to plaintiff's agents and employees, especially where plaintiff is responsible for their absence from district); Hart v. Simons, 29 F.R.D. 146, 147 (E.D. Pa. 1961) (nonresident plaintiff must make himself available at forum absent some showing of hardship); Johnston v. Manufacturers & Traders Trust Co., 22 F.R.D. 67, 69 (W.D.N.Y. 1956) (when plaintiff chooses forum, he should make himself available for examination in forum); Perry v. Edwards, 16 F.R.D. 131, 133 (W.D. Mo. 1954) (ordinarily, party who chooses forum must be available for examination in forum); Worth v. Trans World Films, Inc., 11 F.R.D. 197, 198 (S.D.N.Y. 1951) (requiring plaintiff, a Chicago resident, to travel to New York for deposition in action brought in New York not an undue burden). But see Nagle v. United States Lines, 242 F. Supp. 800, 802 (E.D. Va. 1965) (court held that plaintiff did not have to travel to forum; if one party wants to depose other in forum, it should be prepared to pay travel expenses). See also Financial Gen. Bankshares, Inc. v. Lance, 80 F.R.D. 22, 23 (D.D.C. 1978) (court held not improper to require defendants to appear for taking of deposition in city in which trial will be held).

40. See deDalmady v. Price Waterhouse & Co., 62 F.R.D. 157, 158 (D.P.R. 1973) (rule that plaintiff must travel to forum should not be applied absolutely, but may yield when special circumstances create burden on plaintiff outweighing any prejudice to defendant); Seutehe v. Renwal Prods., Inc., 38 F.R.D. 323, 324 (S.D.N.Y. 1965) (plaintiff may be deposed outside forum when special circumstances outweigh any prejudice to defendant); Alexander v. Oberndorf, 13 F.R.D. 137, 138 (S.D.N.Y. 1952) (requiring plaintiff psychiatrist to travel from California residence to forum in New York for deposition might constitute annoyance, embarrassment, or oppression; but if plaintiff would not travel to New York, she would be required to advance expenses and attorney's fees for deposition in California); Boone v. Wynne, 7 F.R.D. 22, 23 (D.D.C. 1947) (unreasonable under circumstances to require all plaintiffs to travel to forum for depositions).

In *Hyam v. American Export Lines*, the United States Court of Appeals for the Second Circuit stated that the test should weigh a party's "actual, as distinguished from his supposed, need for examination at the forum . . . against the resulting burden to his opponent." If the opposing party is a corporation, several courts have held that the depositions of corporate officers and agents must be held at the corporation's place of business, especially if the corporation is a defendant. If the corporation is the party best able to pay the expenses of taking a deposition, some courts will not order advancement of expenses and may even order the corporation to pay the expenses of the deposing party.

In *Vanderpool*, the court of appeals did not examine whether it would be a financial hardship for the defendant to attend the scheduled depositions. In some jurisdictions, however, an adequate showing of hardship may be sufficient grounds on which to order the advancement of expenses. A mere claim of hardship generally will not be an adequate basis to order advancement; most courts require a detailed showing of inability to bear expenses. Hardship may be shown by affidavits establishing an inability

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42. 213 F.2d 221 (2d Cir. 1954).
43. *Id.* at 222.
45. *See* Leist v. Union Oil Co., 82 F.R.D. 203, 204 (E.D. Wis. 1979) (proper to consider financial position of deponent and of corporate party for which he works in determining place of deposition); Terry v. Modern Woodmen, 57 F.R.D. 141, 143 (W.D. Mo. 1972) (where it was not shown that any harm would result to defendant life insurer's business from agent's brief absence and defendant was best able to bear cost of deposition, defendant would be required to bear expense); Fischer & Porter Co. v. Sheffield Corp., 31 F.R.D. 534, 538 (D. Del. 1962) (since deposition held at defendant's place of business for convenience of defendant, defendant must pay plaintiff's and attorneys' traveling expenses and maintenance); *accord* Tomingas v. Douglas Aircraft Co., 45 F.R.D. 94, 97 (S.D.N.Y. 1966).
46. *See generally* Schmertz, *supra* note 33; *see also* Empire Box Corp. v. Illinois Cereal Mills, 47 Del. 350, 352, 91 A.2d 248, 250 (Super. Ct. 1952).
47. *See* General Leasing Co. v. Lawrence Photo-Graphic Supply, 84 F.R.D. 130, 131 (W.D. Mo. 1979) (claim of financial hardship, taken alone, does not
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to pay expenses or a showing of probable loss of employment by the deponent during a trip to the forum. The court may also consider whether the movant's financial hardship results from the event being litigated.

Expenses may be advanced due to hardship even if the movant is the deposing party. In Haymes v. Smith, the United States District Court for the Western District of New York ordered state correctional officials to pay the costs of a deposition scheduled by an indigent prison inmate in an action brought against the officials. The court held that it would be an undue burden for the plaintiff or a legal assistance organization to pay the costs and expenses of the deposition of one defendant residing in Florida.

Courts may also consider which party stands to benefit from the proposed deposition. If the court believes the deposition will only benefit the deposing party, the court may order that party to pay all expenses. If the deposition will benefit both parties, each may be ordered to bear its own costs.

The Vanderpool decision does not indicate whether the trial court considered alternatives to the advancement of expenses. Nevertheless, there are a number of alternatives that may be pursued before issuing an order to advance expenses. The dissent in Vanderpool points out that an attorney who is unable to attend a deposition often will arrange for local counsel to attend in his place. Some courts require a movant to pursue this option before costs will be advanced, but circumstances may make retention of


51. Id. at 575.
52. Id.
55. 628 S.W.2d at 419 (Pritchard, J., dissenting).
local counsel an unnecessary and perhaps prejudicial burden for the movant.\textsuperscript{57}

Some courts order that depositions be taken either on written interrogatories or orally, and the order may require that the deposing party advance the costs of the deposition if an oral examination is chosen.\textsuperscript{58} In many circumstances, however, it has been held that written interrogatories would not be an adequate means of discovery, and an oral deposition is ordered.\textsuperscript{59} Parties also may be ordered to choose between alternative locations for a deposition,\textsuperscript{60} and future decisions may require parties to consider conducting a deposition by telephone.\textsuperscript{61}

In Vanderpool, the trial court ordered the advancement of both travel

\textsuperscript{57} See Meredith v. Gavin, 51 F.R.D. 5, 6 (W.D. Mo. 1970) (exceptional circumstances may work unusual hardship on plaintiff if not represented by his attorney); Sears v. Doty, 47 Del. 442, 444-45, 92 A.2d 604, 605 (1952) (local counsel not adequate in circumstances).


\textsuperscript{61} Federal Rule of Civil Procedure \textsuperscript{30(b)(7)}, promulgated in 1980, provides that the court may order a deposition to be taken by telephone. The rule could benefit parties in several instances. For example, a nonresident plaintiff who is scheduled to be deposed at the forum might argue that a telephone deposition will be satisfactory. Telephone depositions may also present an attractive alternative to written interrogatories. The Missouri courts, however, have not adopted a provision similar to the federal rule. For a discussion of the federal rule, see 4A J. Moore, J. Lucas & D. Epstein, MOORE'S FEDERAL PRACTICE \textsuperscript{[30.57(15)]} (2d ed. 1981).
and per diem expenses. Courts generally will advance these expenses in what is determined to be a reasonable amount. A more controversial item is the attorney's fee charged for attending the deposition. A reasonable fee may be included in the advancement order. Some courts, however, rarely order the advancement of a fee. In *Nagle v. United States Lines*, the United States District Court for the Eastern District of Virginia held that it is usually enough to order the advancement of travel expenses without any advancement of attorney's fees. 

In *Vanderpool*, the court of appeals read the trial court's order as allowing only expenses, with no advancement of attorney's fees. Therefore, the court of appeals stated that it would not decide whether the trial court's discretion includes advancement of attorney's fees. It appears, however, that trial courts in Missouri may not be able to order the advancement of attorney's fees. Ordinarily, attorney's fees are not recoverable in Missouri as costs of litigation in the absence of a statute allowing such recovery. Missouri Revised Statutes section 492.590 limits the expenses of a deposition that may be taxed as costs. The statute does not include an award of attorney's fees. In *Stogsdill v. General American Life Insurance Co.*, the St. Louis Court of Appeals held that the costs and expenses listed in the statute could not be construed as including attorney's fees.

In *Vanderpool*, the court of appeals distinguished *Stogsdill* by noting that the authority of the trial judge in *Vanderpool* was based on Rule 56, which was not at issue in *Stogsdill*. Nevertheless, *Stogsdill* does establish that at-

62. 628 S.W.2d at 415.
67. Id. at 801.
68. 628 S.W.2d at 416.
69. Id.
70. See *Edwards v. Smith*, 322 S.W.2d 770, 777 (Mo. 1959); *Gerst v. Flinn*, 615 S.W.2d 628, 631 (Mo. App., E.D. 1981); *Stogsdill v. General Am. Life Ins. Co.*, 541 S.W.2d 696, 701 (Mo. App., St. L. 1976); *In re L.G.*, 502 S.W.2d 33, 36 (Mo. App., St. L. 1973).
72. 541 S.W.2d 696 (Mo. App., St. L. 1976).
73. Id. at 701-02.
74. 628 S.W.2d at 417. In *Stogsdill*, the defendant twice gave notice of a deposi-
attorney's fees may not be included in the taxable costs of a deposition, and since fees may not be taxed, it appears unlikely that a court will order their advancement.\(^7\)

An order advancing costs often is a conditional order. For example, the court will often order that if the deposing party is later successful at trial, the expenses of the deposition must then be taxed against the losing party.\(^6\) The advancement of expenses also may be used as a sanction by the court when a party is dilatory or otherwise abuses the discovery process.\(^7\) Advancement may be denied, however, when the motion for a protective order comes after the deposition has been held\(^8\) or after the date ending discovery.\(^7\)

While other jurisdictions have established one or more of the above guidelines when considering a motion for the advancement of expenses, Vanderpool fails to provide similar guidelines for Missouri trial courts. Further, the three opinions written in Vanderpool give varying indications of what factors the Missouri Courts of Appeals will emphasize in reviewing an advancement order.

In Vanderpool, the majority points out that when Missouri courts model a rule of civil procedure upon a federal rule, the Missouri courts will consider the construction of the rule by the federal courts as persuasive, but not

\(^{75}\) The dissent in Vanderpool noted that the trial court's order did not specify whether the costs of the deposition could later be taxed against the losing party. 628 S.W.2d at 419 (Pritchard, J., dissenting).


\(^{77}\) See Banana Distribs., Inc. v. United Fruit Co., 19 F.R.D. 532, 534 (S.D.N.Y. 1956) (party denied travel expense advancement when could have avoided expenses); Page v. Hooper, 18 F.R.D. 235, 237 (E.D. Pa. 1955) (protective order denied where party disregarded court order); Flynn v. Superior Court, 152 Cal. Rptr. 796, 800, 89 Cal. App. 3d 491, 498 (1979) (if party seeking protective order does so for delay, court may award costs to other party); Booker v. Everhart, 33 N.C. App. 1, 10, 234 S.E.2d 46, 53 (1977), rev'd on other grounds, 294 N.C. 146, 240 S.E.2d 360 (1978) (not abuse to order defendant to pay expenses of his deposition when defendant was himself an attorney and took no action to secure his deposition from time answer filed in May, 1974 until he went overseas in military service in 1975).

\(^{78}\) See Adkins v. International Harvester Co., 286 S.W.2d 528, 531 (Ky. 1956) (orderly procedure requires that attorney secure ruling in advance of deposition as to whether it is conditioned upon payment of expenses).

\(^{79}\) See Mitsui & Co. v. Puerto Rico Water Resources Auth., 93 F.R.D. 62, 67 (D.P.R. 1981) (order must be obtained before date set for discovery, and failure to move at that time will preclude objection later).
conclusive, authority. In the concurring opinion, Judge Clark stated that
the court should not look to federal decisions for guidance but rely only on
the facts and circumstances of the case as a basis for decision. Both the
majority and concurring opinions are correct to a degree. Although an
analysis of the facts and circumstances of each case will form the basis for
decision, Missouri courts still should look to federal decisions for guidance
in applying Rule 56.01(c). Federal decisions enunciate standards on which
federal district courts rely in issuing protective orders, and these standards
would help Missouri trial courts when considering a motion to order ad-
vancement of deposition expenses.

The dissent in Vanderpool states that an order to advance expenses
should not be issued without a showing of reasonableness or good cause. Rule 56.01(c) also makes it clear that good cause must be shown. The
majority in Vanderpool has recognized the trial court's broad discretion to
issue protective orders, but appellate courts should be aware that the good
cause requirement in Rule 56.01(c) serves as a limit on the trial court's dis-
cretion. The scope of the trial court's discretion cannot be precisely stated,
but there are several factors that should be of primary importance to the
court in considering an order to advance expenses.

It does not seem that a trial court could properly order the advance-
ment of expenses without examining the following two areas. First, the
court should consider whether the grant or denial of the protective order
will create a hardship for either party. This requires the court to examine
the financial status of the parties, the distance a party may need to travel to
attend the deposition, and which party may benefit from the deposition.
Second, alternatives to a protective order should be considered and perhaps
included in the order. These alternatives include written interrogatories,
telephone depositions, and the attendance of local counsel at the
depositions.

Vanderpool affirms the authority of Missouri trial courts to order ad-
vancement of expenses, but it should not be assumed that the authority
given to the trial courts is unlimited. The Vanderpool majority cited federal

80. 628 S.W.2d at 416. See Kingsley v. Burack, 536 S.W.2d 7, 11-12 (Mo. en
banc 1976) (court will consider federal precedent under similar federal rule); Kin-
cannon v. Schoenlaub, 521 S.W.2d 391, 394 (Mo. en banc 1975) (though not con-
trolling, federal decisions construing federal rule which is similar to state rule
should be considered in construing state rule); Bauldin v. Barton County Mut. Ins.
Co., 606 S.W.2d 444, 447 (Mo. App., S.D. 1980) (where state rule is essentially the
same as federal rule, federal precedents are persuasive, not controlling, authority);
State ex. rel. Litton Business Sys., Inc. v. Bondurant, 523 S.W.2d 587, 588 (Mo.
App., K.C. 1975) (where new state discovery rule had same objectives and purposes
as federal rule, court would consider federal precedent and interpretation in con-
struing and applying new state rule).

81. 628 S.W.2d at 417 (Clark, J., concurring).

82. Id. at 419-20 (Pritchard, J., dissenting).

83. See note 2 supra.
and state decisions recognizing the authority of the trial court to order advancement; appellate courts in Missouri also should examine these decisions for guidelines on the limits of the trial court's discretion. Future appellate decisions should expand on the court's decision in *Vanderpool* and provide guidelines for trial courts to follow in ordering the advancement of deposition expenses.

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