How Much Notice Do I Have to Give Opposing Counsel in Noticing a Deposition?

How much notice do I have to give the opposing counsel (federal government agency) in noticing a deposition? Case is in U.S. District Court.

Can it be as little as two weeks?

I represent the plaintiff in an employment law case. She was fired but her co-workers were willing to let me interview them. They were just not willing to give me an affidavit which I can attach to my motion for partial summary judgment.

I understand that they fear retribution. They will tell me what I need to have for my motion for summary judgment under oath, though.

If I can get this partial motion for summary judgment in now, I feel like I can get the other side to settle and this will be over before a single shot is fired.

The longer I have to wait to depose this guy though, the more work opposing counsel will put in and the less likely he will be willing to settle. He just got thrown this case and knows very little about it - I know he wants to settle, he just needs to see my Mot. Summ. J. first.

So if I submit a notice of deposition tonight, do the date have to be a month away or can it be sooner. If I could notice a depo for tomorrow I would.

FRCP 30(b)(1) "reasonable written notice". However, see FRCP (a)(5)(A).

Flann Lippincott, New Jersey

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frcp rule 32 suggests a 14 day minimum, though I don't recall whether it is itself modified by time-of-service standards:

(5) *Limitations on Use.*

(A) *Deposition Taken on Short Notice.* A deposition must not be used against a party who, having received less than 14 days' notice of the deposition, promptly moved for a protective order under Rule 26(c)(1)(B) requesting that it not be taken or be taken at a different time or place—and this motion was still pending when the deposition was taken.

Erik Hammarlund, Massachusetts

Get a list of the witness's available dates. Then, call your adversary and agree on a deposition date. In the end, you want a working relationship with your adversary. Even if you give timely notice, that does not mean that a court will disregard your adversary's availability or convenience.

Defendants seldom settle just because you serve an early summary judgment motion. Defendants almost never settle without taking the plaintiff's deposition.

Good luck.

Steven Finell, California

How hard is it to call opposing counsel to get mutually convenient dates these days? Every time I get a notice of deposition that was set without picking up the phone to call me it not only infuriates me because of the lack of professionalism, it is always the case that the deposition could have been done sooner had the other attorney just called me.

This newer tactic of trying to get the upper hand in litigation is something I just cannot deal with because if your case is that strong you should not have to get the upper hand. Simply call me.

I just told an attorney yesterday that if my case is really that bad give me the information I need to confront my clients instead of refusing to answer discovery.

Robert Louque, Louisiana

Sounds like two weeks a safe start, but depositions are inevitably rescheduled at least once in my experience when the dates are not set in advance. Send out the notices, but expect some agreement about rescheduling later.

Based on what you are saying, maybe the notices will get the OP to move towards settlement if what the witnesses will be saying is already known to some extent.

Phil A. Taylor, Massachusetts

A lot of defense lawyers like the little skirmishes that upset the plaintiff's bar, like arguing over depo dates. They have to hit their billable hour quotas each year. Unnecessary fighting is how many of them do it. They're like the pig in mud, they love it when you get into the mud and wrassle around with them for a while, they're making money.

Eugene Lee, California

I have actually never encountered this with the defense law firms. Those guys much rather get their billable time in prepping for my client's deposition and/or spending 5 hours asking the same questions over and over.

It's always some solo practitioner trying to get the upper hand and/or trying to scare me into thinking he has a much better case than mine. There are two solos that do it so regularly I am actually almost always prepared with a Motion to Quash Subpoena because I already know my emails and/or messages will not be returned until the afternoon before the deposition they set without consulting me.

I have already faced the fact that we are cranking out so many lawyers from so many subpar law schools, a lack of professionalism is much more prevalent and will likely get even worse as time goes on.

Robert Louque

Really? Around here it's common to send a deposition notice without calling first, often at the same time that written discovery demands are propounded. But not on short notice, and there's an understanding that this is just a tentative date, and the attorneys will work out the details later.

But I agree with you about the gamesmanship of telling the other party that the case is terrible but not producing the evidence that proves it. Fortunately, doesn't happen that often, but I've had adversaries refuse to provide the documents because I haven't issued document demands yet. If the evidence hurts me, let me know right away and I'll see about making the case go away. I don't need to force you to make a summary judgment motion if I know you're going to win; I'll drop my claim.

David M. Nieporent, New York

In my neck of the woods, it is common practice to call the other side to get available dates first then pick one to avoid the necessity of issuing new notices. It may be because court reporters here will charge for the rescheduling of a depo.

Robert Louque

There are defense lawyers on this list. I'm one of them, and I don't appreciate the notion that we are all dishonest jerks who are busy cheating our own clients.

Of course, perhaps all plaintiff's lawyers are lying ambulance chasers who invent victims and harms to line their pockets.

But I wouldn't suggest that, because generalizing about a whole segment of the population is a good rule of thumb.

Patrick W. Begos, Connecticut

I'm pretty sure I said "a lot", not "all". I don't think I was generalizing to include you. Sorry you're offended. I've never dealt with you in

litigation and wasn't talking about you.

Gene Lee, California

That's still a pretty poor generalization

How about defense lawyers are just as diligent, ethical, considerate as plaintiff's lawyers. Or, on the flip side, are just as lazy, unethical, and rude as plaintiff's lawyers.

I am both a plaintiff and defense lawyer, and there are good people and bad people on both sides of the street. Perhaps if all you do is plaintiff work, you have a biased view of the people on the other side.

The only other thing I will say is that people generally get back what they give out. I usually have good relationships with the lawyers on the other side, plaintiff or defense. The exceptions are exceptions. If I found that most lawyers on the other side were jerks to me, I'd probably ask myself why that might be.

Patrick W. Begos

I never compared defense and plaintiff's lawyers. I've seen plenty of egregious behavior on both sides. I'm not going to say one is better than the other. I was just pointing out that I've noticed a lot of defense lawyers will churn cases to create billables. If you want to tell me that isn't a widespread phenomenon, you're entitled to your opinion but it doesn't line up with what I've seen in my years of practice. I will say I've seen a lot of plaintiff's lawyers file frivolous, questionable cases, even intentionally.

As for insinuating I'm a jerk, well, I suppose I can be a jerk at times, though I try not to be. Sorry you think that about me. I don't think I know you well enough to make a similar judgment about you but I guess we won't be having a beer anytime soon.

Have a nice weekend.

Sincerely,

Gene Lee

I probably was a little too passive-aggressive in my earlier post. The comment about defense lawyers got under my skin and I reacted.

I don't think you're a jerk. My apologies for insinuating it

Patrick W. Begos

How much notice would you like given to you (honestly)? That's how much you should give the other side.

David Masters, Colorado

If your case is in EDVA, Local Rule 30(H) creates a presumption of reasonable notice at 11 days.

Jacob M. Small< Virginia

Honestly I have never had a defense attorney set a deposition without calling me for dates. Most will call back to confirm the picked date but I have had a few select a date then set the deposition (which is fine).

Maybe the defense lawyers here have better things to bill but I have never had a problem with a defense lawyer surprise me with a filing. If anything it's almost overkill in making sure I know what they are doing - email, fax, AND snail mail.

Robert Louque

I've worked on both sides.

My impression at big law was that we were utilizing all aspects of the law (which is usually (almost always) complex, time-consuming, and a PIA) to represent our clients in the best possible way. I have tremendous respect for the legal talents and good intentions of my former defense attorney employers. So hearing that many believe defense firms are simply churning files (which I have read many times on Solosez) strikes me as those who are bothered by dealing with every potentially applicable procedure and/or law that govern cases. In other words, they don't want to be hassled by lawyers who are legitimately and appropriately thorough on the other side. I am not talking about anyone in particular -- I just think there is a misconception. If you were in the offices on the same team with these lawyers, my guess is that you would agree with their strategies. Of course, I'm broadly generalizing. But, at top tier firms where I worked, there was not an emphasis on billing. There was an emphasis on winning or serving our clients in the best way possible.

OTOH, I've heard defense attorneys, the popular media, most potential jurors, and many in the general public suggesting / assuming that plaintiff's attorneys pursue frivolous cases. Nothing could be further from the truth. When we have to spend time without guaranteed payment on cases, why in the world would we take cases that we believe have no merit? To the contrary, there is extensive and very careful vetting.

I do have a problem with the extremely high volume of most plaintiff's firms. However, to some degree, this is a problem with the law, not the lawyers. There are too many legitimate legal hurdles, and lower paying cases, for plaintiff's firms to operate without some probably uncomfortable level of volume. So, to be fair to consumers, the laws need to change dramatically. That being said, I still think the lawyer to client ratio in most plaintiff's is WAY wrong -- and not legitimately so.

Tina Willis, Florida

Look, there's nothing wrong with using all aspects of the law to deal with your case. Sometimes's it's fairly technical point; but raising a technical point in defense of your client is perfectly legitimate provided it furthers your clients' goals.

I frequently use motions to strike for failure to state a cause of action. They can be kind of technical, and in some respects they may be ultimately futile; even if granted the plaintiff gets a chance to replead and they USUALLY can replead (though not always). I've been accused of using them for 'delay' tactics. And, to an extent that is true; it does delay my having to file an answer; and by doing so it may allow me to minimize other costs to the client.

F'rinstance, I was involved in some trust litigation; plaintiff had prominent Orlando law firm, not Biglaw but very prominent, I won't name them, along with a NY Law firm, Trustee had lawyer from Gray, Robinson, and plaintiff's Florida attorney filed 7 or 8 count complaint; it ran like 85 paragraphs and 20 or so pages. It's just a pain in the butt to have to answer. Now, this guy was supposedly big time trust litigator, but he made very basic mistake, see below:

2) Florida law requires that a party contesting a trust renounce benefits under that trust. BARNETT NAT. BANK OF JACKSONVILLE et al. v. MURREY 49 So. 2d 535 (Fla. 1950) .

3) To the extent that plaintiffs are contesting the validity of the trust or amendments thereto, plaintiffs need to formally renounce or disclaim any benefits under the trust. Given that plaintiffs are seeking to remove a successor Trustee, (count one), to have the amendments declared 'null and void' (count two), to have the amendments declared 'void ab initio' (count three) and claiming undue influence and lack of capacity (count seven).
Counts One, Two, Three and Seven should be dismissed for failure to state a cause of action under F.R.Civ. P. 1.140 (b). took me about an hour to draft motion plus memo of law (reused one I had before).

He didn't renounce benefits under the trust. This is VERY basic rule in trust (and will) litigation in Florida; and failure to do so will (under most circumstances) properly lead to dismissal of the cause of action.

I also filed MTD for failure to join an indispensable party.

Did I file that to delay the case? I filed it to delay my having to spend a week drafting an answer to what was very sloppy pleading and then having to redraft it after he filed an amended pleading. Did it work? Yes. I never did wind up filing an answer; this case drug on for 3 years without my having to file an answer; because plaintiff never

either set my motion for a hearing or simply filed an amended pleading which I would have to answer; it's not like I didn't spend time on the case, I did, but at least I didn't have to bill the client for 30 hours of 'answering a dog's breakfast of a complaint'.

That's legitimate tactic.

And yet, at one point, when we were at hearing and NY Lawyer flies down to attend, she comes storming into chambers and very pointedly accuses "Mr. Jones has done nothing but delay this case". Judge didn't say anything and I didn't reply but if I had been asked I simply would have said that Plaintiff could have amended his complaint at any time to comply with the law and get the case moving but had failed to do so, and that I had raised the question(s) very early on in the case and that if I hadn't raised them then, that Plaintiff would be complaining that they were prejudiced by my raising them at a later point.

Now, for a counter example: my client, different case, was sued by prominent bank; they were represented by an Amlaw 100 firm; problem is the account agreement clearly stated that upon demand of either party that it would be sent to arbitration. I could have raised that in my answer and had the thing moved to arbitration; but under the facts of the case it was more to our advantage to take it in front of a probate judge. Raising that point really would not have furthered my client's goals. Thus, I didn't use that particular arrow in my legal quiver.

Ronald Jones, Florida