

February 17, 2021

By Electronic Mail

Ms. Christine P. Burak
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Re: Defense Bar/Business Group Support of Proposed Revisions to Mass. R. Civ. P. 30 & 30A

We, the undersigned, are the leading Massachusetts and national organizations representing lawyers who primarily represent defendants in civil litigation. Over 22,000 attorneys are members of the Massachusetts Defense Lawyers Association, DRI-The Voice of the Defense Bar, International Association of Defense Counsel, Federation of Defense & Corporate Counsel, Association of Defense Trial Attorneys, Product Liability Advisory Council, Inc., and Lawyers for Civil Justice. We are also leading businesses, civil justice, and public policy organizations. Our members include countless Massachusetts employers.

We support the amendments to Massachusetts Rules of Civil Procedure 30 and 30A that have been proposed by the Standing Advisory Committee on the Rules of Civil Procedure. The amendments are practical, equitable, and non-partisan. They are also consistent with the approach utilized in the Commonwealth's federal courts and other states. Further, these limitations drive efficiency, force lawyers to be strategic, eliminate the abuse that can occur when time limits are not in place, and help hold down litigation expenses.

We also support the position of the Massachusetts Asbestos Litigation Defendants requesting a carve-out from the proposed 7-hour time limit for multi-party toxic tort cases (and for other product liability matters) for the reasons stated in their comment. Alternatively, in the event the Court chooses to mirror the federal rule, we follow the Massachusetts Asbestos Litigation Defendants' recommendation that the Reporters' Notes instruct trial courts to liberally allow depositions to go longer than the presumptive time limit in complex cases such as asbestos and other product liability cases.

The proposed amendment to Rule 30 to establish a presumptive limit of 10 depositions, each limited to 1 day of 7 hours is timely. Numerous jurisdictions have amended their civil rules to incorporate these presumptive limits in general tort cases.¹ Some jurisdictions allow fewer

¹ For other jurisdictions with a presumptive limit of 10 depositions, each 1 day of 7 hours, see D.C. Super. Ct. R. Civ. P. 30(a), (d); Ind. Commercial Ct. R. 6(D)(2); Haw. R. Civ. P. 30(a), (d); Mo. S.B. 224 (2019) (amending Mo. Sup. Ct. R. 57.03); Mont. R. Civ. P. 30(a), (d); Nev. R. Civ. P. 30(a), (d); N.Y. Ct. R. § 202.70, Rule 11-d (commercial cases); Wis. Code § 804.045; Wyo. R. Civ. P. 30(a), (d). For rules limiting depositions to 1 day of 7 hours, see Ga. Super. Ct. R. 5.3; Mich. Ct. R. 2.306(A)(3); Minn. R. Civ. P. 30.04(b); N.M. R. Civ. P., Dist. Cts. 1.030(D)(2); S.D. Codified Laws § 15-6-30(d)(2).

depositions, limit the total duration of deposition testimony, or both.² Many of these various limitations on depositions are of recent vintage.³

Federal Rule of Civil Procedure 30 has included a presumptive limit of 10 depositions since 1993 and a presumptive durational limit of 1 day of 7 hours per deposition since 2000. *See* Fed. R. Civ. P. 30 Advisory Committee Notes. Similar rules at the state level have been well received. *See* Nat'l Ctr. for State Courts, *Call to Action: Achieving Justice for All* 22 (2016), <https://iaals.du.edu/sites/default/files/documents/publications/cji-report.pdf>.

Massachusetts should adopt the Advisory Committee's proposal and join the many other jurisdictions that have reasonable presumptive limits on depositions by oral examination, subject to the recommendations by the Massachusetts Asbestos Litigation Defendants. In general tort cases, the proposed revisions to Rules 30 and 30A will modernize the Commonwealth's discovery rules and bring about greater harmony with the deposition rule applied in Massachusetts federal courts.

Massachusetts Defense Lawyers Association	DRI-The Voice of the Defense Bar
Federation of Defense & Corporate Counsel	International Association of Defense Counsel
Association of Defense Trial Attorneys	Product Liability Advisory Council, Inc.
Lawyers for Civil Justice	NFIB Small Business Legal Center
American Tort Reform Association	American Property Casualty Insurance Association
Coalition for Litigation Justice, Inc.	National Association of Mutual Insurance Companies
Washington Legal Foundation	

² *See* Alaska R. Civ. P. 30(a), (d) (3 depositions, each 6 hours); Ariz. R. Civ. P. 30(d) (1 day of 4 hours); Ariz. R. Civ. P. 26.2 (30 deposition hours for complex cases); Colo. R. Civ. P. 26(b)(2) (1 deposition of each adverse party and 2 other persons, each 1 day of 6 hours); Ill. Sup. Ct. R. 206(d) (3 hours each); Me. R. Civ. P. 30(a), (d) (5 depositions, each 8 hours); N.H. Dist. Ct. R. 3.26(a) (20 deposition hours); N.H. Super. Ct. R. 26(a) (20 deposition hours); Okla. Stat. tit. 12 § 3230(A) (6 hours each); Utah R. Civ. P. 26(c)(5), 30(d) (30 deposition hours in cases seeking \$300,000 or more with deposition of nonparty limited to 4 hours and party limited to 7 hours); Vt. R. Civ. P. 80.11(e)(4) (15 deposition hours in expedited actions).

³ *See* Ariz. S. Ct., *In re* Various Arizona Rules of Civil Procedure, No. R-17-0010 (amending Ariz. R. Civ. P. 5.1, 8, 8.1, 11, 16, 26, 26.1, 26.2, 29, 30, 33-37, 38.1, 45, and 84) (effective July 1, 2018); Colo. S. Ct., Rule Change 2015(05) (amending Colo. R. Civ. P. 1, 12, 16, 16.1, 26, 30-34, 37, 54, and 121) (effective July 1, 2015); Ind. S. Ct., *In re* Ind. Commercial Courts, No. 19S-MS-295 (adopting Commercial Ct. R. 1-6) (effective May 16, 2019); Mich. S. Ct., ADM File No. 2018-19 (amending Mich. Ct. R. 1.105, 2.301, 2.302, 2.305, 2.306, 2.307, 2.309, 2.310, 2.312, 2.313, 2.314, 2.316, 2.401, 2.411, 2.506, 3.201, 3.206, 3.922, 3.973, 3.976, 3.977, and 5.131 and addition of Rule 3.229) (effective Jan. 1, 2020); Mo. S.B. 224 (2019) (amending Missouri Supreme Court Rules 25.03, 56.01, 57.03, 57.04, 58.01, 59.01, and 61.01); Nev. S. Ct., *In re* Creating a Committee to Update and Revise the Nevada Rules of Civil Procedure, No. ADKT 0522 (amending Nev. R. Civ. P. 1 to 86) (effective Mar. 1, 2019); Wis. A.B. 773 (2018) (Act 235); *see generally* Mark A. Behrens & Christopher E. Appel, *States Are Embracing Proportional Discovery, Moving Into Alignment With Federal Rules*, 29:5 Legal Opinion Letter (Wash. Legal Found., July 17, 2020) (discussing post-2015 amendments to state rules of civil procedure in many states).