

Governor Brown Signs AB 1875 Into Law

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NEWS FLASH: GOVERNOR BROWN SIGNS LAW LIMITING DURATION OF CALIFORNIA DEPOSITIONS, BUT LAW HAS MANY EXCEPTIONS

AB 1875 by Assemblymember Gatto will go into effect January 1

DRA was neutral on the bill

Effective January 1, California attorneys — and therefore you — will be operating under new time constraints similar to those in place in federal litigation when it comes to the duration of depositions, under a bill signed by Governor Brown yesterday.

BACKGROUND:

Under Rule 30(d)(1) of the Federal Rules of Civil Procedure, depositions are presumptively limited to one day of seven hours in duration, unless the Court orders otherwise or the parties stipulate differently. However, currently, as we know, the California Code of Civil Procedure does not contain any such presumptive time limit. (Cal.C.C.P. § 2025 et seq.) As a result, and as we also know, individuals deposed under state law can sometimes be subjected to extremely lengthy depositions.

AB 1875 was sponsored by the Consumer Attorneys of California (CAOC), a powerful group in Sacramento representing the plaintiff's bar, and a group that has in the past been allied with DRA's legislative efforts. It was supported by a broad array of consumer, civil rights, and labor organizations.

CAOC provided an example of why it introduced the bill:

In one documented case, an employee who had contracted mesothelioma from exposure to asbestos and was suing his employer was subjected to 25 hours of deposition over the course of 42 days while his health drastically declined. Less than an hour after his final deposition, he was rushed to the hospital, where he died. In another case, an elderly plaintiff in a financial elder-abuse lawsuit was subjected to three full days of depositions. Two other plaintiffs dropped out of the case shortly after to avoid marathon depositions.

SUMMARY OF WHAT THE BILL DOES:

The new law adds section 2025.290 to the Code of Civil Procedure. The new law says that, unless ordered by the court, a deposition in a civil case shall be limited to one day of seven hours. The new law specifies that the court shall allow additional time if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

The new law contains many, many exceptions. It doesn't apply if:

- The parties have stipulated that it will not apply to either a particular deposition or an entire case.

- To any deposition of an expert witness (where “expert witness” is defined by the bill).
- To any civil case designated as a “complex” case. (The California Rules of Court define a “complex” case.) However this exception does not apply if the medical condition of the witness (substantiated by a doctor in a declaration) justifies a deposition that is limited to two days of no more than seven hours each day. Here is the exact language of this exception:
To any case designated as complex by the court pursuant to Rule 3.400 of the California Rules of Court, unless a licensed physician attests in a declaration served on the parties that the deponent suffers from an illness or condition that raises substantial medical doubt of survival of the deponent beyond six months, in which case the deposition examination of the witness by all counsel, other than the witness’ counsel of record, shall be limited to two days of no more than seven hours of total testimony each day, or 14 hours of total testimony.
- To employment law cases (including cases where someone applied but was denied a job) that arise out of the employment relationship.
- To a person most qualified to be deposed on an issue or matter.
- To a party who has first appeared in the case and hasn’t yet taken a deposition of a witness, in which case the witness can be deposed again, subject to the time limits and exceptions in the new law.

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