



# FAIR TIME LIMITS FOR CIVIL DEPOSITIONS

## BACKGROUND

A deposition is “a witness's out-of-court testimony that is reduced to writing for later use in court or for discovery purposes.” Under Rule 30(d)(1) of the Federal Rules of Civil Procedure, oral depositions are presumptively limited to one day of seven hours in duration, unless the Court orders or the parties stipulate otherwise based on the needs of the case. However, the California Code of Civil Procedure does not contain any such presumptive time limit. (Cal.C.C.P. § 2025 et seq.) As a result, individuals deposed in a California state case can be subjected to marathon sessions without the same protections available in federal court.

AB 1875 enacts a general presumptive time limit for depositions to one day of seven hours, similar to the federal law that has worked for years. As recently amended, the scope of the bill has been narrowed to exclude expert witness depositions, depositions of persons most qualified, employment cases and cases designated as complex pursuant to Rule 3.400 of the California Rules of Court, unless a licensed physician attests that the deponent suffers from an illness that raises substantial medical doubt of survival beyond six months, in which case the deposition will be limited to two days and lasting no more than seven hours each day.

In cases where an injured or ill plaintiff seeks recovery, a presumptive deposition time limit protects the plaintiff from enduring drawn-out depositions. A lengthy deposition can be a stressful and taxing experience, even for healthy people. Also, depositions cost time and money for all parties. Thus, a presumptive time limit can save on burdensome litigation costs.

## HAS DEPOSITION DISCOVERY ABUSE LIKE THIS REALLY HAPPENED?

In California, it has become a common practice to subject witnesses to unnecessarily lengthy depositions in an attempt to delay and discourage litigation.

Unfortunately, there are many instances of deposition abuse. Consider the case of Mrs. Norma Hicks. Mrs. Hicks filed suit alleging fraud and financial elder abuse against a multibillion- dollar insurance company after it sold her



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useless annuities. The company misled Mrs. Hicks into believing that she should invest her limited assets in an annuity that would not mature until she reached 100 years old and the funds could not be accessed without paying a steep penalty. Opposing counsel deposed the frail Mrs. Hicks for three full days, and

two other plaintiffs resolved the case shortly after the elderly husband had been deposed for two strenuous days. Without a presumptive time limit in place, witnesses and parties to a case like Mrs. Hicks are more susceptible to similar abusive discovery tactics.

## UNDER AB 1875, ADDITIONAL TIME FOR DEPOSITIONS WILL BE ALLOWED IF LONGER DEPOSITIONS ARE ACTUALLY NECESSARY.

AB 1875 will not prohibit extending the time needed to conduct depositions when parties agree (stipulate) to extend or the court finds it necessary.

## THE BILL WILL SAVE VITAL COURT RESOURCES AND TIME.

AB 1875 will save vital court resources and time by eliminating the need to move for protective orders in order to limit abusive deposition practices. Under current law, a party or non-party deponent who believes that a deposition either has, or will, take too much time must move for a case-specific protective order from the court to curb an abusive deposition. (Cal. CCP § 2025.420). Resolution of a request for a protective order can take up to two months and is an added cost to the parties. AB 1875 will save time and money by lessening the need to file such motions.

## CONCLUSION

Placing a presumptive time limit on deposition testimony can protect the health of ill deponents, save litigation costs for all parties and give California courts the discretion to promote fairness in every case.

### SUPPORT

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