Wyoming Law Journal

Volume 15 | Number 1 Article 9

December 2019

An Examination of the Protective Orders Issued under Rule 30(b)

John Anselmi

Follow this and additional works at: https://scholarship.law.uwyo.edu/wlj

Recommended Citation

John Anselmi, *An Examination of the Protective Orders Issued under Rule 30(b)*, 15 WYO. L.J. 85 (1960)
Available at: https://scholarship.law.uwyo.edu/wlj/vol15/iss1/9

This Comment is brought to you for free and open access by Law Archive of Wyoming Scholarship. It has been accepted for inclusion in Wyoming Law Journal by an authorized editor of Law Archive of Wyoming Scholarship.

AN EXAMINATION OF THE PROTECTIVE ORDERS ISSUED UNDER RULE 30(b)

Rule 26 of the Wyoming Rules of Civil Procedure permits unlimited discovery into any matter, not privileged, which is relevant to the subject matter of the pending action.[1] However, in order to protect a party or witness from annoyance, embarrassment, or appression, certain safeguards are provided in Rule 30(b), which the Court may apply in the interest of justice. Because Wyoming has adopted Rules of Civil Procedure, patterned after the Federal Rules, an examination of the decisions in the Federal Courts will provide an understanding of how a Wyoming Court might be expected to decide on issues arising under this Rule.

The Rule provides that a motion for relief must be made seasonably, which has been interpreted to mean as soon as a party or deponent learns that he will need the protection of the Court. It was held in one case, that seasonably means prior to the date designated in the notice for the taking of depositions. In that case, the Court ordered the plaintiff's pleadings stricken, under Rule 37(d), for failure of the witness to appear at the proper time.[2] In another case, an Oregon party was required to give his deposition in Arizona because he failed to file a timely motion for change of the place of taking deposition to Oregon.[3]

Good cause must be shown before any relief can be granted. What constitutes good cause depends upont he kind of protective order sought.[4] An examination of some of the typical orders granted will provide an understanding of what a court will consider good cause.

The Rule provides that a court may make an order that the deposition shall not be taken. This requires a strong showing of good cause. In view of the unlimited right of discovery granted by Rule 26, situations will seldom arise in which such an order would be appropriate.[5] However, if the evidence sought is wholly irrelevant and incompetent,[6] or if the case is referrable to arbitration under an arbitration agreement,[7] or if there are no issues of law involved, such an order would be appropriate. A mere allegation without proof that an examination is being made in bad faith has been held to be insufficient.[8]

For the sake of convenience, Rule 30(b) provides that an order may be granted that a deposition be taken only at some designated time or place

1. Wyoming Rules of Civil Procedure, Rule 26.
2. Dictograph Products Inc. v. Kentworth Corp., 7 F.R.D. 543 (W.D. Ky. 1947).
3. Collins v. Wayland, 139 F.2d 677 (9th Cir. 1944), Cert. denied, 322 U.S. 744, 64 S.Ct. 1151, 88 L.Ed. 1576.
4. 4 Moore's Federal Practice, 2007 (2d ed. 1953).
5. Spotts v. O'Neill, 30 F. Supp. 669 (S.D.N.Y. 1939).
6. O'Brien v. Equitable Life Assurance Society of United States, 14 F.R.D. 141 (W.D. Mo. 1953).
7. Pennsylvania Greyhound Lines, Inc. v. Amalgamated Assn. of Street, Electric Railway and Motor Coach Employees of America, 98 F. Supp. 789 (W.D. Pa. 1951).
8. Taejon Bristle Mfg. Co. Ltd. v. Onmex Corp., 13 F.R.D. 448 (S.D. N.Y. 1953).

other than that stated in the notice. The words, "time or," do not appear in the Federal Rule. This amendment was proposed by the Federal Rules Advisory Committee in 1946, but was not adopted by the Supreme Court of the United States.[9] That the Court had authority to change the time of taking the depositions without the addition of the words, "Time or," seems clear. It was generally used to alter the order of the taking. It was also clear that the Court could change the time if it would interfere with the business of deponents.[10] The granting of this order may be on terms. In one case the Court changed the place of taking depositions from Douglas, Arizona, to Philadelphia, the place of trial, but decided the expenses of witnesses were to be taxed as costs in the case.[11] In another because of the travel expense, the plaintiff was given a choice of: 1. Taking the deposition at the home of the defendant; 2. Paying defendant's travel expenses, or 3. Use of written interrogatories.[12] Thus, although a party may set the place for the taking of a deposition, upon a motion seasonably made, the Court may pass upon the propriety of the situs selected, and if found to be a hardship, may change it.[13]

The Court may order that depositions may only be taken on written interrogatories. In one case a defendant was an elderly man who held the position of Board Chairman of Denmark's largest bank. The plaintiff wanted to take depositions in New York. The Court, because of the man's age and business, substituted written interrogatories. The order provided, however, that if insufficient information was acquired, application could be made for oral depositions.[14] The Court might consider the relative burdens placed on the parties by oral examination. It may determine that written interrogatories would be impractical because of the magnitude of the subject matter.[15] One of the prime reasons for requiring that depositions be taken on written interrogatories is the distance involved. Because of the distance, the expense of counsel might make it prohibitive.[16] In Wyoming cases, between Wyoming parties, the problem of expense might not control too often because of the relative proximity of Wyoming towns. However, the amount of money involved in the litigation must be considered in relation to the other expense involved in the use of oral examination.

The Court may order that certain matters shall not be inquired into or that the scope of the examination shall be limited to certain matters. Ordinarily, the Court will require a showing of bad faith before the examination will be limited.[17] There may arise instances in which certain

9 Supra note 4.
10 Clair v. Philadelphia Storage Battery Co., 27 F. Supp. 777 (W.D. Pa. 1947).
11. Perry v. Edwards, 16 F.R.D. 131 (W. D. Mo. 1951).
12. Bariti v. Bianchi, 6 F.R.D. 350 (N.D. Cal. 1946).
13. Haymes v. Columbia Pictures Corp., 16 F.R.D. 118 (S.D. N.Y. 1954).
14. Isbrandsten v. Moller, 7 F.R.D. 188 (S.D. N.Y. 1947).
15. Gitto v. Italia Societa Animona de Navigazione Genoa, 28 F. Supp. 309 (E.D. N.Y. 1939).
16. Butts v. Southern Pacific Co., 7 F.R.D. 194 (S.D. N.Y. 1947).
17. Krier v. Muschel, 29 F. Supp. 482 (S.D. N.Y. 1939).

matters are improper subjects of discovery. The "work product" of an attorney in the preparation of a case for trial falls within this category,[18] or if the matter is obviously privileged,[19] or if it is wholly irrelevant or incompetent.[20] An order will not be issued in advance if no intent to inquire into improper matter is manifested.

An order may be entered that the examination shall be held with no one present except the parties to the action and their officers or counsel. This order is designed to prevent embarrassment or ridicule through the use of the discovery process.[21] To prevent the discovery process from being used for publicity purposes the court may order the deposition sealed and that it shall be opened on order of the Court. It is quite likely that a Wyoming Court would grant such an order in a divorce case if discovery of sensational matters such as adultery is attempted. It might also be granted in a paternity case.

An order may be entered that secret processes, developments or research need not be disclosed. Thus, in one case the plaintiff's assignor was engaged in a competitive business and it was held that to require production of defendant's books could result in their use to defendant's injury.[22]

It may be ordered that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Court. This order has been used primarily in patent cases.[23] Since the Federal Courts have exclusive jurisdiction in patent cases, this portion of the rule would have limited application in the State Court, but it may be applied if an attempt to discover trade secrets has been made.

The Court may make any other order which justice requires to protect the party or witness from annoyance, undue expense, embarrassment or oppression. The words, "undue expense," have been added to the Federal Rule. These words were proposed by the Federal Rules Advisory Committee, but were not adopted by the United States Supreme Court. The insertion of the words gives the Court clear authority to protect the party or witness where the taking of the deposition would necessitate the outlay of undue costs or expenditures in order to comply.[24] It has been held that mere inconvenience is not annoyance, embarrassment or oppression.[25] A hardship to a deponent of making a second long journey when the information could have been obtained during a prior examination has been held sufficient.[26] Under this portion of the Rule, the Court may specify

18. Hickman v. Taylor, 329 U.S. 495, 67 S.Ct. 385, 91 L.Ed. 451.
19. Smith v. Crown Publishing Inc., 14 F.R.D. 514 (S.D. N.Y. 1953).
20. Supra note 6.
21. 4 Moore's Federal Practice, 2035 (2d ed. 1953).
22. Cooney v. Guild Co., 1 F.R.D. 246 (S.D. N.Y. 1953).
23. Supra note 21 at 2037.
24. Id., at 2007.
25. Goldberg v. Raleigh Manufacturers Inc., 28 F. Supp. 975 (D. Mass 1939).
26. Rosenblum v. Dingfelder, 2 F.R.D. 309 (S.D. N.Y. 1941).

the person before whom the deposition may be taken.[27] It could supervise the taking of a deposition, or order that it be taken before a master or some particular person.[28]

It would be possible for a court to give undue emphasis to the protective orders, and in doing so, it might unduly hamper the use of the discovery process. But the protective orders will undoubtedly be used for the purpose intended, which is the prevention of abuse of the discovery rules.

JOHN ANSELMI

CIVIL LIABILITY FOR UNINTENTIONALLY SHOOTING A PERSON WHILE HUNTING

The use of firearms for hunting wildlife was a matter of necessity and not of sport before the birth of our nation and continued to be so well into the last century. During the Revolutionary War the Continental riflemen displayed the skill which they had attained through hunting to considerable advantage as militia and impressed upon the political thought of our founding fathers the value of a citizenry armed to defend itself against appression. This idea found powerful expression in the Second Amendment of the Constitution of the United States.[1]

Hunting has undergone a drastic change from the days when the rifle was the hunter's daily companion to the twice a year hunter of today. Statistics were not recorded in those early days but a review of the compiled reports available today shows an alarming number of accidents. According to the 1958 Uniform Hunter Casulty Report published by the National Rifle Association there is one reported casualty per 7,800 hunters[2] and in each year since 1950, one casualty in every five or six was fatal.[3] In about half[4] of the reported cases the shooter fired intentionally and managed to hit a human victim; in the other half, the shooter did not intend to fire, but the weapon was nevertheless discharged.[5]

In 1607 the history of cases concerned with the unintentional shooting of a person began with the case of *Weaver v. Ward.*[6] This case is supposed

27. Nahrasoff v. U.S. Rubber Co., 27 F. Supp. 953 (S.D. N.Y. 1939).
28. Hirsch v. Glidden Co., 19 F. Supp. (S.D. N.Y. 1949).

1. "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const., Amend II.
2. In 1955, according to a National Survey of Fishing and Hunting, close to 12 million persons in the U.S. hunted on at least one day, and a total of over 169 million man-days were spent in hunting.
3. Of the 1,531 cases analyzed 17% were fatal.
4. In 53% of the cases analyzed the weapon was discharged unintentionally.
5. Material from the 1958 Uniform Hunter Casulaty Report, published and copyright by the National Rifle Association. The report includes accident figures from 33 states and 2 Canadian provinces.
6. Hobart 134 (1607).