

Depositions — Length of depositions.

Question: How long may a deposition be? Rule 30(d) states that “oral questioning of a nonparty shall not exceed four hours, and oral questioning of a party shall not exceed seven hours,” but the Committee Note to Rule 26 says that “deposition hours are charged to a side for the time spent asking questions of the witness. In a particular deposition, one side may use two hours while the other side uses only 30 minutes.” Does this mean that a deposition of a nonparty, such as a treating physician, could take eight hours? (Four hours by defense counsel, and four hours by plaintiff’s counsel.) Or is it only four hours total?

Answer: It is only four hours total. Under Rule 30(d), the maximum total length of a deposition of a nonparty is four hours of oral questioning from all parties, and the maximum total length of a deposition of a party is seven hours of oral questioning from all parties. Under Rules 26(a)(4)(B) and 30(d), the maximum total length of a deposition of an expert witness is four hours of oral questioning from all parties.

The limitations in Rule 26(c)(5) on total deposition hours per side address the aggregate amount of standard fact discovery permitted and have no bearing on the permissible length of any individual deposition, except that, if one side has exhausted its available deposition hours, that may function to limit the length of a specific deposition. (Indeed, each side in a Tier 1 case is limited to three total fact deposition hours and therefore may not take a four- or seven-hour deposition, despite the language of Rule 30(d).)

The deposition time limitations in Rules 26(c)(5) and 30(d) accomplish different purposes and apply separately from each other. Each side must plan its overall deposition strategy to fall within the aggregate time limitations specified in the Rule 26(c)(5) tier system, and multiple parties on the same side are encouraged to cooperate with each other (or to seek court guidance if necessary) in allocating that time appropriately. Rules 30(d) and 26(a)(4)(B) operate independently of the tier system to ensure no nonparty or expert deposition exceeds four hours total, and no party deposition exceeds seven hours total. Nothing in Rule 26(c)(5) allows any individual deposition to exceed these time limits.