

THE STATE OF NEW HAMPSHIRE

**HILLSBOROUGH, SS.
NORTHERN DISTRICT**

SUPERIOR COURT

Atlantic Anesthesia, P.A.

v.

Ira Lehrer, et al.

Wentworth-Douglass Hospital

v.

Atlantic Anesthesia, P.A., at al.

Docket Nos. 218-2019-CV-933, 218-2019-CV-1683, 219-2019-CV-424

ORDER ON MOTION TO EXCEED SEVEN HOUR DEPOSITION LIMIT

Plaintiffs Atlantic Anesthesia, P.A. (“Atlantic”) and North American Partners in Anesthesia (New Hampshire), LLP (“NAPA-NH”) (collectively “Plaintiffs”)¹ have moved for leave to extend the deposition of Defendant Dr. Ira Lehrer (“Lehrer”) to a second seven-hour day. The Physician Defendants (“Defendants”) object.

Business and Commercial Dispute Docket Standing Order 6 states the following:

Unless otherwise stipulated or ordered by the Court, a deposition is ordinarily limited to 1 day of 7 hours. On motion made, the Court will allow additional time if needed for fair examination of the deponent or if the deponent or another person or any other circumstance impedes or delays the deposition.

¹ For purpose of this order, the Court will treat Atlantic and NAPA-NH as one entity. These parties are also both defendants in one of the cases but for purposes of simplicity, they are referred to simply as “Plaintiffs.”

The comment to this standing order provides further clarity:

In complicated cases involving many issues and/or documents, counsel often cannot conduct a full and fair deposition within 7 hours. The 7-hour rule is an aspirational goal, and not a fixed limit, and the Court will ordinarily grant a motion to exceed depositions in excess of 7 hours if a lawyer represents in good faith that he or she needs additional time.

Against this backdrop, the parties have been unable to reach agreement on whether Plaintiffs may depose Lehrer for a second day.

For purposes of this order, the Court incorporates the procedural and factual summaries in its March 28, 2022 order. The above matter involves three consolidated cases all relating to the departure of several anesthesiologists from Plaintiffs to Wentworth-Douglass Hospital (“WDH”) in Dover, New Hampshire.² Plaintiffs allege that Lehrer, who is a named defendant in the lead case (218-2019-CV-933), breached his contract with Plaintiffs and committed a number of torts (tortious interference, breach of fiduciary duty, misappropriation of trade secrets, and civil conspiracy) in connection with these departures. More specifically, Plaintiffs allege that Lehrer was “Chief” of Plaintiffs’ practice and breached the fiduciary duty that flowed from that position by coordinating the movement of all or substantially all of the clinicians from the office Lehrer oversaw to WDH.

Plaintiffs’ counsel took Lehrer’s deposition on December 10, 2021 for apparently 7 hours. Plaintiffs make the following representations in support of their request for a second day for the Lehrer deposition. They state that they pre-marked 230 exhibits but were only able to ask Lehrer about “a handful of them.” Plaintiffs also note that the

² Plaintiffs note that by agreement certain claims that were filed in a fourth lawsuit, which was filed in New York, were consolidated into the above matters.

three combined suits involve facts over a five-year period, a dozen or more contracts, “thousands of written communications, novel issues of New Hampshire law applicable to those contracts and evidentiary privileges, and, more generally complex medical practices for anesthesia and pain management at a major New Hampshire Hospital.” Reply Memorandum at 3. Plaintiffs state that the parties have already conducted two dozen fact depositions, plan to take nearly another dozen going forward, and have disclosed five experts. Plaintiffs note that they will have to explore Defendants’ assertion of the common interest privilege and Plaintiffs’ assertion that the crime-fraud exception applies. Finally, Plaintiffs point to a number of documents that Defendants have produced subsequent to the first deposition.

In their objection, Defendants focus on the documents produced after December 10, 2021. They argue that the subject matter of these exhibits was well known to Plaintiffs prior to the December 10, 2021 deposition and thus do not warrant resumption of the deposition or, at most, entitle Plaintiffs to only an additional hour of deposition time.

If this were a simple case, the Court might be inclined to agree with Defendants. However, for the reasons outlined by Plaintiffs, this is far from a simple case. In their objection, Defendants suggest that the number of cases is misleading because all of the cases focus on the “same set of meetings, discussion and contract negotiations.” Objection at 6. However, Defendants do not meaningfully respond to Plaintiffs’ arguments concerning a large number of exhibits that were never addressed during the first deposition, the mixture of contract and tort claims (including breach of fiduciary duty claims) against multiple defendants, and the privilege issues that have been generated by the parties’ dispute over the applicability of the common interest privilege. A failure

to reach the majority of pre-marked exhibits is particularly significant as the Comment to Standing Rule 6 expressly notes that a seven-hour deposition may not be sufficient in cases involving many documents. More generally, this is far from a simple non-competition dispute that focuses on one or two paragraphs in a single employee's employment agreement. Indeed, the parties agreed to try the case in Strafford County rather than Hillsborough in order to accommodate the numerous WDH anesthesiologists who are expected to testify and the concern that a longer travel requirement might negatively affect the operation of WDH.

Given this complexity, the Court concludes that Defendant's request for a second deposition day is made in good faith. That is an important determination as the comment to Standing Order 6 states that the 7-hour rule is "aspirational" rather than "fixed" and that "the Court will ordinarily grant a motion to . . . exceed . . . seven hours if a lawyer represents in good faith that he or she needs additional time." The Comment also notes that in "complicated cases," counsel often cannot complete a deposition within 7 hours." Standing Order 6.

Read in conjunction with the Comment, Standing Order 6 does not create a particularly high threshold for the typically complicated case in the Business and Commercial Dispute Docket. The moving party needs to establish two points. First, it must show that the case has a considerable level of complexity. Second, it must lay out why seven hours was inadequate for the particular deponent at issue. Plaintiffs have easily satisfied both requirements.

Accordingly, Plaintiffs' motion for leave to conduct a second, seven-hour deposition of Lehrer is GRANTED.

September 29, 2022

Date



Judge David A. Anderson