

An employer believed that a former employee had disclosed the employer's trade secrets. As a result, the employer sued the employee in federal court for infringement of trade secrets. The employer sought to conduct an oral deposition of the employee. The employer's attorney sent the employee's attorney written notice of the deposition. On the day of the deposition, the employee and the employee's attorney arrived at the designated location, but the employer and the employer's attorney failed to attend.

What should the federal court do upon request?

- A. Award the employee the reasonable expenses of attending the deposition.
- B. Dismiss the employer's claim against the employee.
- C. Enter a protective order that prohibits a future deposition of the employee.
- D. Hold the employer in contempt of court.

### Explanation:

A deposition is a **discovery method** in which a party conducts a written or oral examination\* of someone (deponent) under oath and outside of court. The party seeking to conduct an **oral deposition** (deposing party) must provide **notice** to all other parties. When the deponent is a party, such notice compels the attendance of the party.

If parties that were given notice attend a deposition and the **deposing party does not attend**, then the deposing party is **liable** for the **reasonable expenses of attendance** (including attorney's fees) incurred by the parties that attended. The federal court should therefore, upon request, award the employee the reasonable expenses of attending the deposition.

\*An oral deposition is preferred and more common because an attorney can question the deponent in real time and adjust his/her questions based on the deponent's answers.

**(Choice B)** A court may impose **sanctions** (eg, dismissing a claim) on a party who fails to attend his/her own deposition. But here, sanctions are unwarranted because the employer failed to attend the employee's deposition—not its own.

**(Choice C)** A protective order is a court order issued to protect a person from whom discovery is sought from annoyance, embarrassment, oppression, undue burden, or undue expense. Here, there is no indication that any such harm will result from a future deposition, so the court is unlikely to issue a protective order.

**(Choice D)** A court may hold a *nonparty* deponent in **contempt of court** for failing to comply with a subpoena that compels his/her attendance at a deposition (not seen here).

### Educational objective:

A deposing party must provide notice of an oral deposition to all other parties. If parties that were given notice attend a deposition and the deposing party does not attend, then the deposing party is liable for the reasonable expenses of attendance, including attorney's fees, incurred by the parties that attended.

### References

- Fed. R. Civ. P. 30(g) (failure to attend deposition or serve subpoena).

## Remedies for failure to attend oral deposition

