

An employee brought a federal diversity action against his former employer, a chemical manufacturing company, seeking damages for injuries sustained on the job. During discovery, the employee's attorney served the company with notice of a written deposition she intended to conduct of one of the company's former managers. The employee's attorney attached the questions she intended to have the court officer ask the manager at the deposition. Eight days later, the company sent the manager and the employee the questions it wanted the officer to ask the manager on cross-examination. The employee's attorney served written objections to the form of the cross-examination questions four days after they were served. Twelve days later, the employee's attorney served the questions she wanted the officer to ask on redirect. Six days after service of the redirect questions, the company served its objections to the redirect questions and the questions it wanted the officer to ask on recross-examination.

Which of the following events was untimely?

- A. Service of the cross-examination questions.
- B. Service of the objections to the form of the cross-examination questions.
- C. Service of the redirect-examination questions.
- D. Service of the recross-examination questions.

Explanation:

A **written deposition** is a **method of discovery** in which an officer asks a deponent questions and records the responses under oath and outside of court. The party requesting the deposition must serve the deponent and all other parties with **written notice** and a copy of the questions to be asked on direct examination (direct questions). The other parties may then serve the deponent and all other parties with **responsive questions** as follows:

- **Cross-questions** – questions to be asked during cross-examination must be **served within 14 days after** service of the **notice and direct questions** (here, they were timely served 8 days later) **(Choice A)**.
- **Redirect questions** – questions to be asked during redirect must be **served within 7 days after** service of the **cross-questions** (here, they were untimely served 12 days later).
- **Recross-questions** – questions to be asked during recross must be **served within 7 days after** service of the **redirect questions** (here, they were timely served 6 days later) **(Choice D)**.

Therefore, service of the redirect-examination questions in this case was untimely.

(Choice B) A party must serve any written objections to the form of a question within the time required for serving a responsive question. This means that objections to the company's cross-questions were due at the same time as the redirect questions—7 days after service of the cross-questions. Therefore, the employee's attorney timely served written objections to the form of the cross-questions 4 days after they were served.

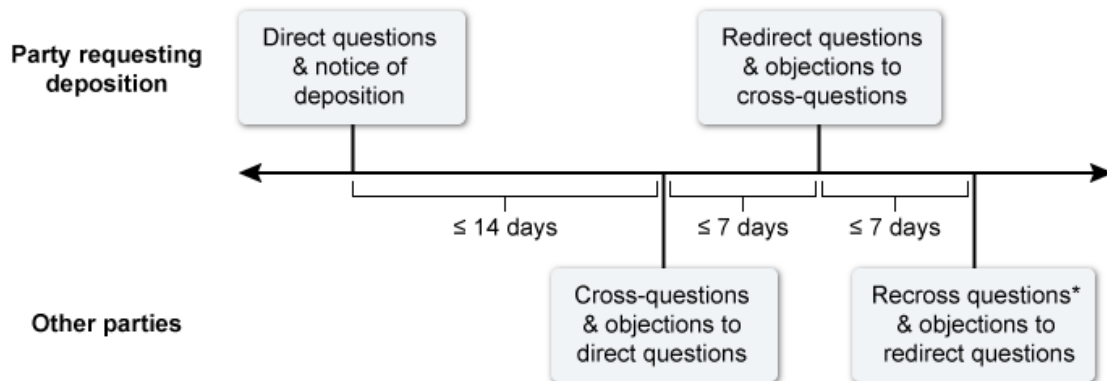
Educational objective:

For a written deposition, (1) cross-questions must be served within 14 days after service of direct questions, (2) redirect questions must be served within 7 days after service of cross-questions, and (3) recross-questions must be served within 7 days after service of redirect questions. Objections are due at the same times.

References

- Fed. R. Civ. P. 31 (depositions by written questions).
- Fed. R. Civ. P. 32 (objections to form of questions in written depositions).

Service of questions and objections in written depositions



*Objections to recross questions must be served ≤ 7 days after service of recross questions.

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