

A man sued his supervisor in a federal district court for sexual harassment in violation of federal law. During discovery, the man's attorney served the supervisor with a request to admit that the supervisor made derogatory jokes about the employee at a company party. The supervisor admitted to making the jokes. The man's attorney has now filed a motion with the district court for permission to take the depositions of 15 employees who will testify to hearing the supervisor make the derogatory jokes at the company party.

If the court denies the man's motion, what is the likely explanation?

- A. The company did not designate the employees to testify on its behalf.
- B. The court may not alter the 10-deposition limit.
- C. The depositions would be unreasonably cumulative and duplicative.
- D. The employees cannot be deposed because they are not parties in the suit.

## Explanation:

### Limitations on discovery

(FRCP 26(b)(2))

**Permissible** Court *may* alter limits upon:

- number of depositions, interrogatories, or requests for admission *and*
- length of oral depositions

**Required** Court *must* limit discovery that:

- is unreasonably cumulative or duplicative
- is obtainable from more convenient, less burdensome, or less expensive source
- contains information that party had ample opportunity to obtain *or*
- is outside scope of discovery

**FRCP** = Federal Rule of Civil Procedure.

**Discovery** is the pretrial phase of a lawsuit during which the parties can use various **methods** to compel disclosure of information related to the case. Information is within the scope of discovery if it is relevant to any party's claim or defense, proportional to the needs of the case, and not privileged. Although the scope of discovery is broad, a federal court **must limit** the frequency or extent of discovery pursuant to a party's motion or on its own initiative when the discovery sought:

- is **unreasonably cumulative or duplicative**
- can be **obtained** from a more convenient, less burdensome, or less expensive **alternative source**
- contains information that the party has had **ample opportunity to obtain** by other means *or*
- is **outside the scope** of discovery.

Here, the man seeks to take the depositions of employees who will testify that they heard the supervisor make derogatory jokes about the man. This nonprivileged information is within the scope of discovery since it is relevant and proportional to the man's sexual harassment claim. However, the depositions would be unreasonably cumulative and duplicative because the supervisor *admitted* to making the jokes in response to the man's **request for admission**. Therefore, this is the likely explanation if the court denies the man's motion.

**(Choice A)** An organization (eg, the company) that has been served with proper **written notice** of a deposition must designate individuals to testify on its behalf. However, such a designation is irrelevant here since the company is not a deponent in the case.

**(Choice B)** A federal court may alter the 10-deposition limit if a party requests the court's leave (ie, permission).\*

\*Leave of court is also required when (1) the deposition is sought before the initial planning conference, (2) the deponent has already been deposed in the case, or (3) the deponent is in prison.

**(Choice D)** A party may depose any other party or nonparty—including the employees.

**Educational objective:**

A court must limit the frequency or extent of discovery when the discovery sought (1) is unreasonably cumulative or duplicative, (2) can be obtained from a more convenient, less burdensome, or less expensive source, (3) contains information that the party has had time to obtain by other means, or (4) is outside the scope of discovery.

**References**

- Fed. R. Civ. P. 26(b)(2)(C) (required limitations on discovery).