

A company incorporated in State A and with its principal place of business in State B sued its former employee from State C in a federal district court in State A for allegedly embezzling \$80,000. During a deposition of the employee in State B, the company's attorney asked the employee whether he stole the money. The employee's attorney objected and directed the employee not to answer to preserve his Fifth Amendment privilege against self-incrimination. The company's attorney thinks this privilege does not apply because she believes that the statute of limitations has run on any criminal proceedings that could be brought against the employee for his conduct.

How should the company's attorney proceed?

- A. Adjourn the deposition and file a motion with the federal court in State B to compel the employee to answer.
- B. Adjourn the deposition and file a motion with the federal court in State C to compel the employee to answer.
- C. Proceed with the deposition and then file a motion with the federal court in State A to compel the employee to answer.
- D. Proceed with the deposition and then file a motion with the federal court in State B to compel the employee to answer.

## Explanation:

### Depositions

Type	Procedure	Objections	Answers
<b>Oral</b> (most common)	<ul style="list-style-type: none"><li>• Questions asked by attorneys</li><li>• No notice of questions</li><li>• Responses recorded by officer</li></ul>	Concisely stated on record	Answer required unless: <ul style="list-style-type: none"><li>• enforcing court-ordered limitation</li><li>• presenting motion to terminate or limit <i>or</i></li><li>• preserving privilege</li></ul>
<b>Written</b>	<ul style="list-style-type: none"><li>• Questions asked by officer</li><li>• Notice of questions required</li><li>• Responses recorded by officer</li></ul>	Served in writing	

A deposition is a method of discovery in which a party conducts a written or oral examination of another (ie, the deponent) under oath and outside of court. In an **oral deposition**, the parties' attorneys question the deponent. Like at a trial, any **objections** to these questions must be stated on the record or they may be [waived](#). But unlike a trial, a judge is not present to rule on any objections. As a result, the objection is noted, the examination proceeds, and the **deponent must answer** the questions **unless** refusing to answer is necessary to:

- enforce a court-ordered limitation (eg, an order limiting the deposition's scope)
- present a motion to terminate or limit the deposition (eg, to prevent unreasonable annoyance or embarrassment of the deponent) *or*
- **preserve a privilege** (eg, [privilege against self-incrimination](#))—as seen here.

The questioning party may adjourn or complete the deposition before **filing a motion to compel** a response. If the deponent is a **nonparty**, the motion must be filed where the **deposition occurred**. But if the deponent is a **party** (as seen here), it must be filed where the **lawsuit is pending**. Therefore, the company's attorney should proceed with the deposition and file a motion in State A federal court to compel the employee's answer (**Choices A, B & D**). The judge will then assess the merits of the employee's privilege claim and decide if a response is required.

### Educational objective:

When a deponent refuses to answer a question at a deposition, the questioning party may file a motion to compel a response. When the deponent is a nonparty, that motion must be filed in the district where the deposition occurred. But when the deponent is a party, the motion must be filed where the lawsuit is pending.

**References**

- Fed. R. Civ. P. 30(c)(2) (objections at depositions).
- Fed. R. Civ. P. 37(a)(2)–(3) (motion to compel deposition answer).

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