

TO:

Rule 28 Distribution

Don Bivens

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ATTACHMENT*

COMMITTEE COMMENT

1991 Amendment to Rule 30(a)

~~Rule 30(a) is intended to address the problem of overuse of expensive and unnecessary depositions. Any party may take the deposition of any other party, including depositions taken under Rule 30(b)(6), the deposition of any disclosed expert, and the depositions of the custodian of documents without agreement or leave of court. Treating physicians are regarded as disclosed experts for purposes of this rule. Depositions of custodian taken as a matter of right shall be limited to questions necessary to secure the documents and to provide evidentiary foundation for their admissibility. The rule, along with Rule 26.1 and Rule 16, is intended to encourage voluntary disclosure of information between the parties and is further intended to require at a minimum consultation between counsel prior to the setting of depositions. Any party may take the deposition of any other party, including depositions taken under Rule 30(b)(6) and the deposition of any disclosed expert, without agreement or leave of court. Any other depositions must be taken either by agreement of the parties, on motion and order of the court, or pursuant to an order of the court following a Comprehensive Pretrial Conference under Rule 16. Refusing to agree to the taking of a reasonable and necessary deposition should subject counsel to sanctions under Rule 26(f).~~

*Deletions from text are indicted by strikeouts.