

## **WHEN IS A DEPOSITION ERRATA SHEET IMPROPER?**

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© June 19, 1997

Many litigators think a deposition errata sheet is limited in state court cases to non-material changes made within thirty days. Review of our rule and some authorities shows it is not so clear.

There are no Indiana state court cases that discuss the type of changes that can be made by a deposition errata sheet or what it means if changes are made beyond thirty days. Unfortunately, this matter is also not covered by the applicable trial rule.

Trial Rule 30(E) covers submitting the deposition to the witness for reading, signing, and changes. Trial Rule 30(E)(1) says that when the deposition testimony is transcribed it is to be submitted to the witness for reading and signing, unless such has been waived. Trial Rule 30(E)(2) says that a witness can change any answer on a separate form which is signed by the witness and affixed to the original deposition. It specifically says "any answer" and does not limit in any way what types of changes can be made or the number of changes which can be made. It also does not say that these changes have to be made within thirty (30) days.

Trial Rule 30(E)(3) says that if reading and signing has not been waived, then the deposition shall be signed and returned by the witness within thirty (30) days. It does not say the separate form of changes has to be returned within thirty (30) days. Trial Rule 30(E)(4) says that if the deposition is not returned within thirty (30) days, the reporter shall certify that fact and then the deposition can be used as though it had been signed. It does not say that if the separate form of changes is not returned within thirty (30) days the witness loses all rights to make any changes.

The current federal rule is substantially different than Indiana's rule. The original text of Federal Rule of Civil Procedure, Rule 30(e) is substantially similar to Indiana's current T.R. 30(E). See Wright, Miller, & Marcus, Federal Practice and Procedure: Civil 2d, Volume 8, chapter 6, page 15 (hereafter Wright & Miller). The 1970 and subsequent amendments made little change to Fed.R.Civ.P. 30(e). Wright & Miller, p. 17. However, in 1993 Fed.R.Civ.P. 30(e) was substantially changed and now states that the deponent has thirty (30) days to make any changes. Wright & Miller, p. 12 & 23. Before 1993, Fed.R.Civ.P. 30(e) did not require changes to be made within thirty (30) days and neither did the Indiana rule based on the original federal text.

In addition, although some federal cases have held that changes to a deposition could not be material changes, there are no Indiana cases which so hold and there are other federal cases which hold to the contrary. Wright & Miller, p. 134. Apparently what would be a material change would be within the discretion of the trial court. A deposition errata sheet is a matter related to discovery. It is well settled that the trial court has broad discretion in ruling on discovery matters. *E.g., Lucas v. Dorsey Corp.* 609 N.E.2d 1191, 1195 (Ind. Ct. App. 1993) *trans. den.*

Given the above, how should a trial court rule if a party complains about the types or number of changes made by a deposition errata sheet?

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