



# memorandum

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DATE: December 22, 1997  
TO: Discovery Subcommittee  
FROM: Tom Willging  
SUBJECT: Data on durational limits on depositions

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To assist the subcommittee in its review of the proposal to limit the length of depositions (Tab 3 in the agenda book), this memorandum presents empirical data on the duration of depositions as gleaned from the Center's survey of counsel in 1,000 closed civil cases.

Summary. Few attorneys reported either that there were too many depositions or that one or more depositions took too much time. As the number of hours spent in depositions increased, the total cost of litigation also increased, as did the time from filing to disposition.

Issues. This report addresses the following questions:

- In cases in which an attorney complained that there were too many depositions, how many depositions were taken?
- In cases in which an attorney complained that too much time was taken in depositions, how long were the longest and average depositions?

Findings. As reported in the Center's study,<sup>1</sup> Table 1 shows that the median number of individuals deposed in a case was four and the mean was six. Three-quarters of the attorneys reported that seven or fewer individuals were deposed in their case. The median number of hours reported spent in all depositions was ten, and the mean was twenty five. Overall, the median length of the longest deposition in their case was reported to be four hours,

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<sup>1</sup> Thomas E. Willging, John Shapard, Donna Stienstra, and Dean Miletich, *Discovery and Disclosure Practice, Problems, and Proposals for Change 32* (Federal Judicial Center 1997)

and three-quarters of the attorneys reported spending no longer than seven hours in any single deposition.

**Table 1**  
**Frequency and length (hours) of reported depositions**

	Number of deponents (N=592)	Average length (N=579)	Total hours (N=587)	Length of longest deposition (N=572)
75th percentile	7	5	24	7
Median	4	3	10	4
25th percentile	2	2	5	3
Mean	6	4	25	6

A very small percentage of attorneys who had used depositions reported that there had been “too many depositions:” twenty-four attorneys, or 4%. In those cases, the average number of depositions was more than three times that of cases with no such complaint. Table 2 presents data on the differences in those sets of cases. The vast majority of complaints about the number of depositions arose in cases that had the highest numbers of depositions (above the 90th percentile) in the sample as a whole.

**Table 2**  
**Frequency of reported depositions by attorney reports that there were “too many depositions”**

Number of depositions	“Too many depositions” reported <i>N</i> = 24	No reported problem with number of depositions <i>N</i> = 568
Mean	17	5
Median	15	4
90th percentile	30	10
10th percentile	6	1

Similarly, when attorneys complained that “too much time was taken in some or all depositions,” the average length of those depositions was well above the length of depositions in cases in which an attorney did not so report—more than twice as long. Table 3 presents data on that point. Here, a majority of the complaints arose in cases that had the longest amount of time spent in depositions (above the 90th percentile) in the sample as a whole.

**Table 3**  
**Reported length of longest deposition by attorney reports that there “too much time was taken in some or all depositions”**

Length of depositions	“Too much time” reported <i>N</i> = 69	No reported problem with amount of time taken <i>N</i> = 503
Mean	11	5
Median	7	4
90th percentile	24	9
10th percentile	3	2

Relationship to litigation cost and duration. In our multivariate analysis, we found that the total number of hours spent in depositions was associated with increased overall litigation costs, that is, as the number of hours spent in depositions rises, the overall cost of litigation also rises. This relationship manifests itself even when one holds constant the effects of other variables, such as case complexity or the size of stakes.<sup>2</sup> While this finding may appear to be obvious, its opposite may not have been implausible in the absence of our data. For example, our findings also indicate that the amount of time spent in depositions does not reduce total litigation costs by expediting settlement or by obviating the need for other forms of discovery.

We also found that having higher percentages of costs attributable to depositions was associated with increased time from filing to disposition.<sup>3</sup> Of course, we cannot say that the increased deposition costs were the cause of the increased time. Higher monetary stakes were also associated with increased time to disposition. We might speculate that in higher stakes cases clients are willing to invest more money in depositions and that the time needed for those depositions extends the life of the case. We might further speculate that limiting the duration of depositions might not control the length of the case because courts might be more likely to grant exemptions from such limits in high stakes cases.

<sup>2</sup> Id. at 54.

<sup>3</sup> Id.