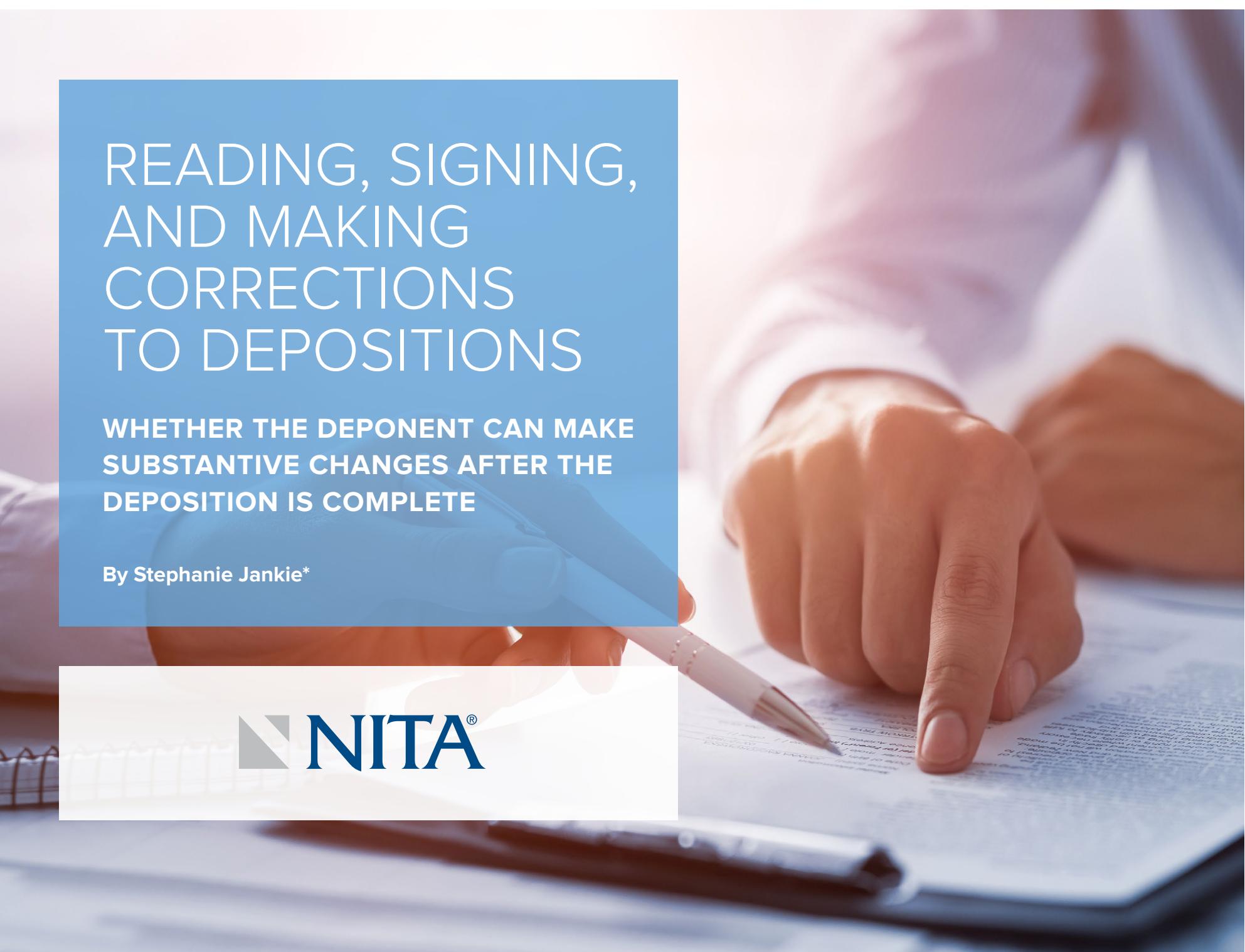


READING, SIGNING, AND MAKING CORRECTIONS TO DEPOSITIONS

**WHETHER THE DEONENT CAN MAKE
SUBSTANTIVE CHANGES AFTER THE
DEPOSITION IS COMPLETE**

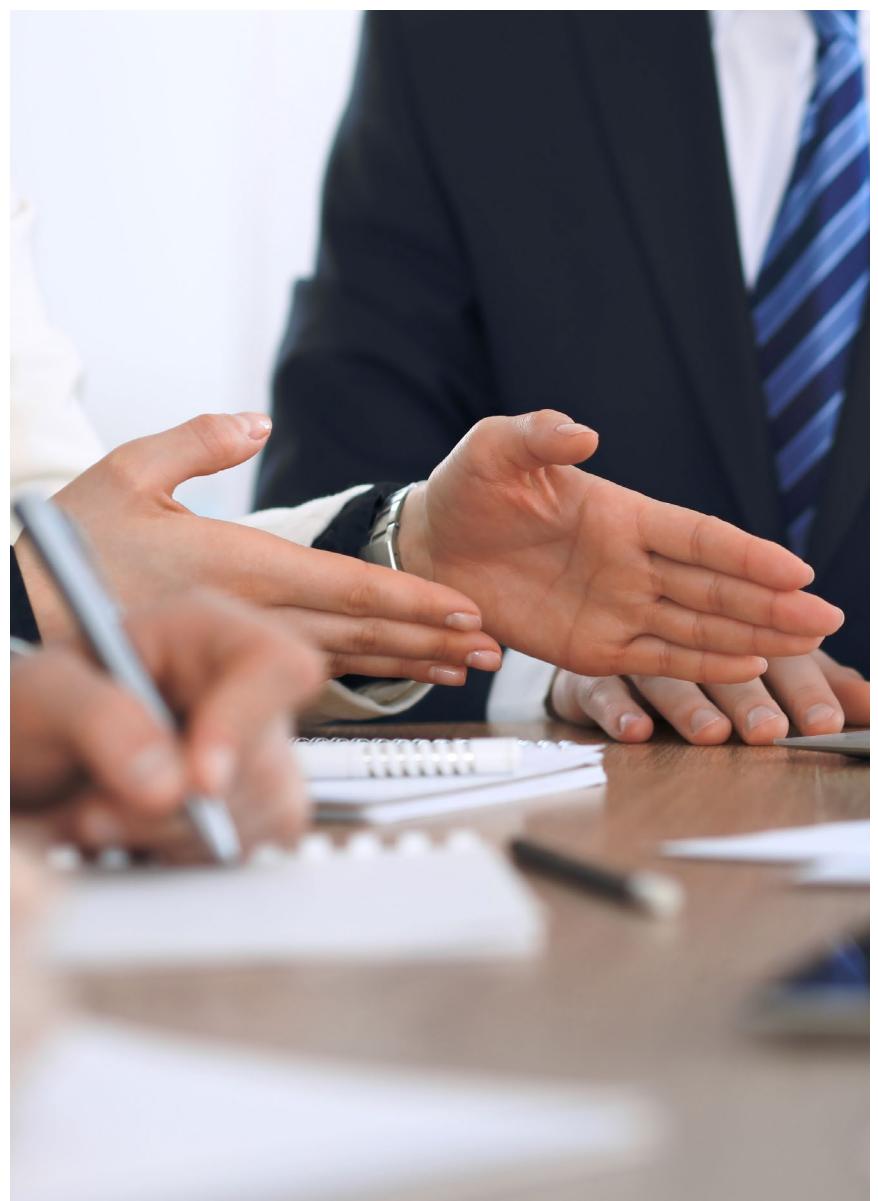
By Stephanie Jankie*



Introduction

After a deposition is completed in the federal court system, a court officer will notify deponents when the deposition transcript is available for review.

A deponent has thirty days from that notification in which to review the deposition transcript, make “changes in form or substance” to the deposition transcript, and give written reasons for the changes.¹ The deponent’s changes to the deposition transcript are submitted on an errata sheet,² while the deponent’s original answers remain in the transcript.³ Fed. R. Civ. P. 30(e)(1) does not explicitly state what types of changes are allowed, although it does include the word “substance.” Hence, the issue is whether the deponent can make substantive changes or only typographical changes.⁴



1. Fed. R. Civ. P. 30(e)(1).
2. See *Hambleton Bros. Lumber Co. v. Balkin Enters.*, 397 F.3d 1217, 1224–25 (9th Cir. 2005).
3. Fed. R. Civ. P. 30(e)(1); *Podell v. Citicorp Diners Club*, 112 F.3d 98, 103 (2d Cir. 1997).
4. See *Walker v. George Koch Sons, Inc.*, No. 2:07cv274 KS-MTP, 2008 U.S. WL 4371372 at *5–6 (S.D. Miss. Sept. 18, 2008).

An example of a substantive change is, “if I asked you was the light green or red and you said green in your deposition and then said red when you read your transcript, that would be . . . [a] substantive change.”⁵ Federal courts are split on the question of whether courts may allow substantive changes or only typographical changes to deposition testimony.⁶ A typographical or corrective change is a change that is not made to material answers, but rather corrects grammar or errors made in typing the deposition transcript.⁷

The majority view allows substantive changes to deposition transcripts, following the plain language of Fed. R. Civ. P. 30(e)(1).⁸ Moreover, the majority view gives the trial courts discretion to reopen depositions so that deponents can provide reasons for the changes.⁹ The increasing minority view is more restrictive and only allows corrective changes to the deposition testimony.¹⁰

The goal of this article is to explain 1) procedural requirements necessary to submit changes to deposition testimony, 2) federal courts’ views on corrections to depositions¹¹, and 3) a comparison

of Florida, New York, and California state laws on corrections to depositions as illustrative of state practice.¹²

5. *Moriarty v. Am. Gen. Life Ins. Co.*, No. 17-cv-1709-btm-wvg, 2018 WL 4628365 at *8 (S.D. Cal. Sept. 27, 2018).

6. See *Green v. Wing Enters.*, No. 1:14-CV-01913-RDB, 2015 U.S. Dist. LEXIS 13654 at *4 (D. Md. Feb. 5, 2015).

7. See *Pina v. Children’s Place*, 740 F.3d 785, 792 (1st Cir. 2014).

8. See *id.* at 791–92; *Podell v. Citicorp Diners Club*, 112 F.3d 98, 103 (2d Cir. 1997); *EBC, Inc. v. Clark Bldg. Sys.*, 618 F.3d 253, 267 (3d Cir. 2010); *Gonzalez v. Fresenius Med Care N. Am.*, 689 F.3d 470, 480 (5th Cir. 2012).

9. See *Pina*, 740 F.3d at 791–92; *Podell*, 112 F.3d at 103; *EBC, Inc.*, 618 F.3d at 267; *Gonzalez*, 689 F.3d at 480.

10. See *Hambleton Bros. Lumber Co.*, 397 F.3d at 1226.

11. See discussion *infra* in “Making Corrections to Depositions in Federal Court.”

12. See discussion *infra* in “Making Corrections to Depositions in State Court.”

Making Corrections to Depositions in Federal Court

Under Fed. R. Civ. P. 30(e)(1), a deponent is allowed to make changes to deposition testimony.¹³ Federal courts have been strict about the deadline for when deponents may submit changes to their deposition testimony.¹⁴ Federal courts in some jurisdictions have allowed both substantive and typographical changes to deposition testimony, and all jurisdictions allow typographical corrections.¹⁵ A number of federal courts allow substantive changes, but whether the deposition may be reopened for further questioning regarding the changes is subject to the judge's discretion, as is whether to make the deponent pay for a reopened deposition, or whether to order that both original and changed answers be in the record for trial.¹⁶ Under Fed. R. Civ. P. 30(e)(1), all courts require any change to the deposition testimony to be accompanied by a reason for the change, with the actual change marked on a separate errata sheet.¹⁷ However, courts vary on how sufficient the reason for the change must be.¹⁸ For example,



a court that follows the majority rule would allow substantive changes to deposition transcripts, but may not allow a particular substantive change because the deponent did not provide an adequate reason.¹⁹

13. Fed. R. Civ. P. 30(e)(1).

14. See *Hambleton Bros. Lumber Co.*, 397 F.3d at 1224.

15. See *Ashcraft v. Welk Resort Grp., Corp.*, 2017 WL 5180421 at *3y (D. Nev. Nov. 8, 2017).

16. See *Pina*, 740 F.3d at 791–92; EBC, Inc., 618 F.3d at 267–68.

17. See *Hambleton Bros. Lumber Co.*, 397 F.3d at 1224–25.

18. *Id.*

19. See *Jackson v. Teamsters Local Union 922*, 310 F.R.D. 179, 181 (D.D.C. 2015).

Procedural Background: The Thirty-Day Requirement

The procedural time limit in Fed. R. Civ. P. 30(e)(1) is not the subject of judicial debate.²⁰ It states, “[o]n request by the deponent or a party before the deposition is completed, the deponent must be allowed thirty days after being notified by the officer that the transcript or recording is available in which: (A) to review the transcript or recording.”²¹ The deponent must submit an errata sheet with deposition testimony changes within thirty days after being notified that the transcript is available.

The impact of the time limit is discussed in *EBC Incorporated v. Clark Building Systems*.²² In that case, the trial court granted the defendant’s motion for summary judgment on a contract breach claim, and the plaintiff filed a motion for reconsideration. To oppose summary judgment, the plaintiff had relied on a deponent’s errata sheet that was included with the deponent’s original testimony in an effort to clarify the deponent’s answers. The United States District Court for the Western District of Pennsylvania denied

the motion for reconsideration because the errata sheet was not timely submitted. On appeal, the Third Circuit explained that a deponent must ask to review the deposition before the deposition is completed.²³ The court reporter is then prompted to notify the deponent when the deposition is available for review. A deponent has thirty days from the time the officer notifies the deponent that the deposition transcript is available for review to submit an errata sheet.²⁴ The Third Circuit affirmed the lower court’s judgment that the errata sheet was untimely because the court reporter had notified plaintiff’s counsel that the deposition transcript was available on January 15, 2007, and the deponent submitted an errata sheet on March 12, 2007, twenty-six days after the deadline. The deponent has thirty days from the time the officer notifies the deponent that the deposition transcript is available for review, not thirty days from when the deponent receives the deposition transcript.²⁵

The Ninth Circuit held similarly in *Hambleton Brothers Lumber Co. v. Balkin Enterprises*.²⁶ There, the court granted the defendant’s motion to strike the plaintiff’s untimely submitted errata sheet. The

20. *EBC, Inc.*, 618 F.3d at 265.

21. Fed. R. Civ. P. 30(e)(1).

22. *EBC, Inc.*, 618 F.3d at 261.

23. *Id.* at 265.

24. *Id.* at 261.

25. *Id.*

26. *Hambleton Bros. Lumber Co. v. Balkin Enters.*, 397 F.3d 1217, 1224 (9th Cir. 2005).

court reporter notified the plaintiff of the deposition transcript on December 31, 2001, so the deadline to submit an errata sheet was January 30, 2002. The plaintiff argued that it did not receive the deposition transcript until January 7, 2002, so the deadline would have been February 7, 2002. The court held that the plaintiff's errata sheet submitted on February 1, 2002, was untimely because the thirty-day clock begins to run when the court reporter notifies the deponent or party, not when the deponent or party is in possession of the deposition transcript.²⁷ The time requirement of Fed. R. Civ. P. 30(e)(1) is clear, and federal courts continue to enforce the thirty-day time limit for submitting changes.²⁸

Substantive Changes

Unlike the procedural time requirement of Fed. R. Civ. P. 30(e)(1), the substance of what can be changed in a deposition transcript is the subject of debate in the federal courts.²⁹ At first glance, Fed. R. Civ. P. 30(e)(1) appears to allow “changes in form or substance.”³⁰ The federal courts’ interpretation of “changes in form



or substance,” however, varies depending upon the circuit.³¹ The majority of federal courts follow a plain meaning interpretation of Fed. R. Civ. P. 30(e)(1) and allow substantive changes, allowing subsequent depositions to clarify substantive changes in the judge’s discretion.³² The increasing minority view is more restrictive

27. *Id.*

28. *EBC, Inc.*, 618 F.3d at 265.

29. See *Walker v. George Koch Sons, Inc.*, No. 2:07cv274 KS-MTP, 2008 U.S. WL 4371372, at *5–6 (S.D. Miss. Sept. 18, 2008).

30. Fed. R. Civ. P. 30(e)(1).

31. See *Jackson v. Teamsters Local Union 922*, 310 F.R.D. 179, 181 (D.D.C., 2015); *Pina v. Children’s Place*, 740 F.3d 785, 792 (1st Cir. 2014); *Podell v. Citicorp Diners Club*, 112 F.3d 98, 103 (2d Cir. 1997); *EBC, Inc., v. Clark Bldg. Sys.*, 618 F.3d 253, 265 (3d Cir. 2010); *Gonzalez v. Fresenius Med. Care N. Am.*, 689 F.3d 470, 480 (5th Cir. 2012); *Thorn v. Sundstrand Aerospace Corp.*, 207 F.3d 383, 389 (7th Cir. 2000); *Hambleton Bros. Lumber Co. v. Balkin Enters.*, 397 F.3d 1217, 1224 (9th Cir. 2005); *Garcia v. Pueblo Country Club*, 299 F.3d 1233, 1242 n. 5 (10th Cir. 2002); *Norelus v. Denny’s, Inc.*, 628 F.3d 1270, 1281 (11th Cir. 2010).

32. See *Pina*, 740 F.3d at 791–92; *Podell*, 112 F.3d at 103; *EBC, Inc.*, 618 F.3d at 267; *Gonzalez*, 689 F.3d at 480.

in its interpretation of “changes in form or substance.”³³ The minority view only allows corrective typographical changes to the deponent’s deposition testimony.³⁴

The Majority View

The First, Second, Third, and Fifth Circuit Courts of Appeals generally allow substantive changes to a deposition transcript, but each have developed a variety of rules on subsequent measures after allowing substantive changes to deposition testimony.³⁵ Most commonly, these circuits allow substantive changes, but require the modified testimony to be attached to the original testimony on an errata sheet.³⁶ The trial courts have discretion whether to reopen depositions, with the cost allocated to the party that submitted the errata sheet.³⁷ The Second Circuit allows substantive changes with the preventative measure to apply in judge’s discretion.³⁸ The Fifth

Circuit allows substantive changes, but prevents attorneys from abusing errata sheets to skew the facts of the case in their favor.³⁹ The Eleventh Circuit does not allow substantive changes if the errata sheet is unreasonably long because too many substantive changes alter the entire deposition testimony.⁴⁰

As noted above, some courts allow substantive changes, but the courts have discretion regarding whether to reopen depositions with the cost allocated to the party who submitted the errata sheet.⁴¹ In *Pina v. Children’s Place*, the defendant submitted a four-page errata sheet to correct and clarify his deposition testimony.⁴² The plaintiff filed a motion to reopen the deposition because the defendant’s errata sheet contained material changes to the defendant’s original testimony, such as “yes, sometimes” to “yes, when we have a qualified applicant and an open position.”⁴³ Although the defendant’s changes were not clearly contradictory

33. See *Hambleton Bros. Lumber Co.*, 397 F.3d at 1226.

34. See *id.*

35. See *Pina*, 740 F.3d at 792; *Podell*, 112 F.3d at 103; *EBC, Inc.*, 618 F.3d at 267; *Architectural Ingenieria Siglo XXI LLC, v. Dom. Rep.*, No. 13-20544-civ-moore/mcailey, 2016 U.S. Dist. LEXIS 186226 at *5 n. 1 (S.D. Fla. Dec. 14, 2016); *DS Waters of Am., Inc. v. Fontis Water Inc.*, No. 1:10-cv-0335-scj, 2011 WL 13122270 at *9–10 (N.D. Ga. Dec. 13, 2011); *Ala. Aircraft Indus., Inc. v. Boeing Co.*, No. 2:16-mc-01216-rdp, 2017 U.S. Dist. LEXIS 211996 at *7–10 (N.D. Ala. May 22, 2017).

36. *Podell*, 112 F.3d at 103.

37. *EBC, Inc.*, 618 F.3d at 267; *Pina*, 740 F.3d at 791.

38. *EBC, Inc.*, 618 F.3d at 268.

39. See *Gonzalez*, 689 F.3d at 481.

40. See *Norelus*, 628 F.3d at 1273.

41. *Pina*, 740 F.3d at 791.

42. *Id.*

43. *Id.* at 792.

changes from “yes” to “no,” the First Circuit held that Fed. R. Civ. P. 30(e)(1) does not limit a party to make only corrections of stenographic errors (i.e., typos). The court further held that the defendant did not make substantive changes, so the court did not need to reopen the deposition. Even if the change had been a substantive change, the decision to reopen the deposition was within the judge’s discretion.⁴⁴

While these courts allow substantive changes, they require the modified testimony to be attached to the original testimony. For example, in *Podell v. Citicorp Diners Club*,⁴⁵ the plaintiff reviewed his deposition transcript after his deposition was complete, drew lines through damaging responses, and made contradictory changes. When the trial court addressed a motion for summary judgment, the United States District Court for the Southern District of New York used both the original and changed deposition testimony to determine that the only evidence favoring the plaintiff’s claim was found in the errata sheet. On appeal, the plaintiff argued that the changes to the deposition transcript became a part of the actual transcript so that the changes on the errata sheet voided the original response on the deposition transcript. The Second Circuit held that “changes in form or substance” to the deponent’s



deposition testimony are allowed, and that the circuit has no limitation to the type of changes that can be made, but the original answer to the deposition questions will remain as part of the actual record.⁴⁶ The errata sheet does not replace or void the original deposition testimony, but rather supplements it.⁴⁷

44. *Id.*

45. *Podell*, 112 F.3d at 103.

46. *Id.*

47. *Id.*; *Usiak v. New York Tank Barge Co.*, 299 F.2d 808, 810 (2d Cir. 1962).

Other courts have developed a flexible approach and allow substantive changes with application of potential subsequent measures left to the judge's discretion.⁴⁸ In *EBC Incorporated v. Clark Building Systems*, discussed above, the plaintiff did not timely submit its errata sheet. The Third Circuit considered what would have happened if the plaintiff had met the procedural requirements of Rule 30(e)(1). The court explained that it applies a flexible standard. When reviewing a motion for summary judgment, it does not allow substantive changes to deposition testimony if the changes are contradictory because the alterations would defeat summary judgment. Otherwise, substantive changes are allowed, within the judge's discretion. It is left to the judge to decide whether to apply subsequent measures to prevent abuse of Rule 30(e)(1), such as reopening depositions.⁴⁹

The Fifth Circuit allows substantive changes but prohibits attorneys from abusing errata sheets. In *Gonzalez v. Fresenius Medical Care North America*,⁵⁰ the plaintiff made certain allegations in her complaint, but statements in her deposition contradicted assertions in the complaint.⁵¹ The plaintiff's attorney submitted an

errata sheet with 101 corrections. The changes to the deposition transcript matched the plaintiff's statements in her complaint. The defendant moved to strike the errata sheet and reopen the plaintiff's deposition. The District Court for the Western District of Texas determined that the plaintiff's errata sheet was made in good faith and denied the motion to strike the errata sheet but granted the motion to reopen the plaintiff's deposition. At trial, the plaintiff changed her answers again and stated her attorney made changes to her errata sheet. The district court inferred bad faith by the attorney and awarded sanctions.⁵² The Fifth Circuit found no abuse of discretion by the trial court because the "district court assumed good faith in the initial filing of the complaint, but noted that counsel should at least have developed questions about the merits of [the plaintiff's] claim when she disclaimed a critical allegation from her complaint in the first deposition."⁵³ Thus, in the Fifth Circuit, substantive changes are allowed in errata sheets, but counsel cannot abuse the use of an errata sheet.

The Eleventh Circuit does not allow substantive changes if the errata sheet is unreasonably long. In *Norelus v. Denny's, Inc.*,⁵⁴

48. *EBC, Inc.*, 618 F.3d at 268.

49. *Id.*

50. *Gonzalez*, 689 F.3d at 481.

51. *Id.* at 480.

52. *Id.* at 481.

53. *Id.* at 480.

54. *Norelus v. Denny's, Inc.*, 628 F.3d 1270, 1273 (11th Cir. 2010).

the plaintiff filed a sixty-three-page errata sheet with 868 changes to plaintiff's eight-day deposition. The main reason for the plaintiff's changes was because she did not speak English, and she had her brother interpret the deposition question for her.⁵⁵ The defendant filed a motion to dismiss the complaint, arguing that the amount of changes constituted perjury.⁵⁶ The district court denied the defendant's motion, but subsequently reopened depositions twice and ordered the plaintiff to pay the costs. On appeal, the Eleventh Circuit dismissed the plaintiff's appeal because the plaintiff's attorney failed to litigate the appeal, and the court imposed sanctions on the plaintiff's attorney.⁵⁷ The Eleventh Circuit also held that the sixty-three page errata sheet, with 868 changes to the plaintiff's deposition testimony, was improper due to the amount of changes.⁵⁸ The use of an errata sheet in this case was improper because of the unreasonable length of the errata sheet and the unreasonable number of changes.⁵⁹

55. *Id.* at 1276.

56. *Id.* at 1278.

57. *Id.* at 1279.

58. *Id.* at 1280.

59. *Id.*



In summary, four circuits commonly allow substantive changes to a deponent's testimony.⁶⁰ Each circuit applies its own subsequent remedial measures when substantive changes are allowed.⁶¹

The Minority View

The Seventh, Ninth, and Tenth Circuits explicitly do not allow substantive changes; they only allow typographical corrections.⁶² Several of the courts do not allow substantive changes to deposition testimony because clarification of deposition testimony can be made at trial.⁶³ Some courts do not allow substantive changes to depositions when the deponent does not have a legitimate purpose in making the change, the change creates a "sham affidavit," or the change alters what the deponent said under oath.⁶⁴ Some of the courts simply do not allow substantive changes to deposition testimony.⁶⁵

The Seventh Circuit does not allow substantive changes to deposition testimony because clarification of deposition testimony can be made at trial. In *Thorn v. Sundstrand Aerospace Corp.*,⁶⁶ an age discrimination case, the defendant was asked in deposition what criteria he used to employ people. The deponent answered, "people . . . we feel have the longest-term potential for those whose product lines we were eliminating."⁶⁷ Afterwards, the plaintiff used the deponent's term, "long-term potential," as synonymous with "youngest" to prove age discrimination.⁶⁸ The deponent submitted an errata sheet to change his deposition response to "people were associated with the products that had the longest term [sic] potential versus those whose product lines we were eliminating."⁶⁹ The deponent changed the word "for" to "versus." The deponent explained that he made this change to his deposition testimony because the original language was garbled.⁷⁰ The Seventh Circuit held that even if the deponent acted in good faith

60. See *Pina*, 740 F.3d at 792; *Podell*, 112 F.3d at 103; *EBC, Inc.*, 618 F.3d at 267; *Architectural Ingenieria Siglo XXI LLC, v. Dom. Rep.*, No. 13-20544-civ-moore/mcailey, 2016 U.S. Dist. LEXIS 186226 at *5 n. 1 (S.D. Fla. Dec. 14, 2016); *DS Waters of Am., Inc. v. Fontis Water Inc.*, No. 1:10-cv-0335-scj, 2011 WL 13122270 at *9–10 (N.D. Ga. Dec. 13, 2011); *Ala. Aircraft Indus., Inc. v. Boeing Co.*, No. 2:16-mc-01216-rdp, 2017 U.S. Dist. LEXIS 211996 at *7–10 (N.D. Ala. May 22, 2017).

61. *Pina*, 740 F.3d at 791.

62. See *Thorn v. Sundstrand Aerospace Corp.*, 207 F.3d 383, 389 (7th Cir. 2000); *Hambleton Bros. Lumber Co.*, 397 F.3d at 1225–26; *Garcia v. Pueblo Country Club*, 299 F.3d 1233, 1242 n. 5 (10th Cir. 2002).

63. See *Thorn*, 207 F.3d at 389.

64. See *Burns v. Bd. of County Comm'r's of Jackson County*, 330 F.3d 1275 (10th Cir. 2003).

65. See *Garcia*, 299 F.3d at 1242 n. 5.

66. *Thorn*, 207 F.3d at 389.

67. *Id.*

68. *Id.* at 388.

69. *Id.* at 388–89.

70. *Id.* at 389.

when he submitted the errata sheet, the deponent tried to change his deposition from what he said to what he meant, and the court does not allow that type of alteration. Furthermore, the court explained that if the plaintiff had attempted to use the deponent's original testimony at trial as evidence of age discrimination, the deponent could have then explained what he meant and the jury would have decided if the deponent was truthful. The court did not allow the substantive changes to the deponent's testimony even for clarification because, according to the court, the deposition is not a "take-home exam" and the court does not want contradiction in the deposition testimony.⁷¹

The Ninth Circuit does not allow substantive changes to deposition testimony when the deponent has no legitimate purpose in making the change, the change creates a sham affidavit, and the change alters the deponent's testimony under oath. In *Hambleton Brothers Lumber Co. v. Balkin Enterprises*,⁷² the defendant moved for summary judgment, and the plaintiff then submitted corrections to its deposition testimony. The corrections expanded on previous statements, rewrote portions of previous statements, and included new accusations. The district court granted the defendant's

motion to strike the plaintiff's changes. The Ninth Circuit affirmed, explaining that changes to deposition testimony under Fed. R. Civ. P. 30(e)(1) "(1) must have a legitimate purpose, (2) must not be used as a sham solely to create a material issue of fact to evade summary judgment, and (3) must not be used to alter what was actually said under oath."⁷³ The circuit court affirmed because 1) the plaintiff did not state a reason for the changes that would support a legitimate purpose, 2) the plaintiff made changes solely to create a material fact dispute, and 3) the plaintiff's corrections were contradictory to its original statement.⁷⁴ In sum, the appellate court held that Fed. R. Civ. P. 30(e)(1) is only to be used for "corrective and not contradictory changes."⁷⁵

The Tenth Circuit does not allow substantive changes to a deponent's deposition testimony because substantive changes alter the original deposition testimony. In *Garcia v. Pueblo Country Club*,⁷⁶ the defendant relied on an errata sheet that contained substantive changes to the deposition testimony in order to succeed on a motion for summary judgment. The Tenth Circuit reversed the trial court because the Tenth Circuit does not allow counsel to make material changes to deposition testimony or to

71. *Id.*

72. *Hambleton Bros. Lumber Co.*, 397 F.3d at 1224–26.

73. *Id.* at 1224–26 (quoting *Ashcraft v. Welk Resort Grp. Corp.*, No. 2:16-cv-02978-jad-njk, 2017 WL 5180421 at *6 (D. Nev. Nov. 8, 2017)).

74. *Id.*

75. See *id.*

76. *Garcia*, 299 F.3d at 1242 n. 5.



convert the original deposition testimony. The court explained that “depositions differ from interrogatories . . . A deposition is not a take home examination.”⁷⁷

The Seventh, Ninth, and Tenth Circuits only allow typographical changes to deposition testimony. All three circuits have their own reasons as to why they do not allow substantive changes, but all forbid substantive changes to deposition testimony because they do not want the original deposition testimony altered.⁷⁸

Federal District Court Case Law

The District of Columbia does not have precedential decisions; neither do the Fourth, Sixth, and Eighth Circuits.⁷⁹ District court decisions vary within each circuit, and the variations are similar to both majority and minority views.⁸⁰

In *Jackson v. Teamsters Local Union*, the United States District Court for the District of Columbia addressed whether a motion to strike an errata sheet should be made before the summary judgment

77. *Id.*; *Greenway v. Int'l Paper Co.*, 144 F.R.D. 322, 325 (W.D. La. 1992).

78. See *Thorn*, 207 F.3d at 389; *Hambleton Bros. Lumber Co.*, 397 F.3d at 1224–26; *Garcia*, 299 F.3d at 1242 n. 5.

79. See *Jackson v. Teamsters Local Union* 922, 310 F.R.D. 179, 181 (D.D.C. 2015); *Thorp Revocable Trust v. Ameritas Inv. Corp.*, 57 F. Supp. 3d 508, 517 (E.D.N.C. 2014); *Jermano v. Graco Children's Prods.*, No. 13-cv-10610, 2015 WL 1737548 at *5–7 (E.D. Mich. Apr. 16, 2015); *Wigg v. Sioux Falls Sch. Dist.* 49-5, 274 F. Supp. 2d 1084, 1090 (D.S.D. 2003).

80. See *Jackson*, 310 F.R.D. at 181; *Thorp Revocable Trust*, 57 F. Supp. 3d at 517; *Jermano*, 2015 WL 1737548 at *5–7; *Wigg*, 274 F. Supp. 2d at 1090.

phase because 1) it gives both parties advance knowledge on how to prepare arguments, and 2) it eliminates potential problems arising from contradictory errata sheets that create a genuine issue of material fact before summary judgment.⁸¹ The district court addressed three types of changes that may be in an errata sheet: 1) directly contradictory changes, 2) substantive and material additions, and 3) relatively minor clarifications.⁸² The court explained that directly contradictory changes and substantive material changes are not allowed without a sufficient reason.⁸³ The court held that relatively minor clarifications are allowed because, in the case before it, they were not challenged. The United States District Court for the District of Columbia thus allows substantive changes as long as the changes are accompanied by a sufficient reason.⁸⁴

The Fourth Circuit comprises West Virginia, Virginia, South Carolina, North Carolina, and Maryland.⁸⁵ The United States

District Court for the District of West Virginia has not explicitly stated whether it allows substantive changes, although at least two courts in that district do not allow deponents to make substantive changes to deposition testimony without a reason.⁸⁶ Conversely, the district courts in Virginia in both the Eastern and Western districts generally do allow substantive changes.⁸⁷ Courts in the Eastern District are more strict and allow substantive changes only for corrections, not as tactical adjustments, whereas courts in the Western District have a broader view that is in line with the majority view.⁸⁸ Courts in the District of South Carolina allow deponents to make substantive changes to deposition testimony, requiring an errata sheet to be attached to the original deposition.⁸⁹ In contrast, courts in the Eastern District of North Carolina do not allow a party to make substantive changes to deposition testimony if the changes are contradictory.⁹⁰ The United States District Court for the Middle District of North Carolina does not allow a party

81. *Jackson*, 310 F.R.D. at 184–86.

82. *Id.* at 185.

83. *Id.* at 185–86.

84. *Id.*

85. See *Hutchison v. Ethicon, Inc. (In re Ethicon Inc.)*, No. 2:12-cv-01711, 2018 U.S. Dist. LEXIS 50186 at *1 (S.D. W. Va. Mar. 27, 2018); *Crump v. Tcoombs & Assocs. LLC*, No. 2:13cv707, 2014 U.S. Dist. LEXIS 133854 at *1 (E.D. Va. Sept. 23, 2014); *Thorp Revocable Trust*, 57 F. Supp. 3d at 508; *Deloach v. Philip Morris Cos.*, 206 F.R.D. 568 (M.D.N.C. 2002); *Livingston v. Luberoff*, No. 3:17-1985-JMC-SVH, 2019 U.S. Dist. LEXIS 103064 at *1 (D.S.C. June 19, 2019); *Green v. Wing Enters.*, No. 1:14-CV-01913-RDB, 2015 U.S. Dist. LEXIS 13654 at *1 (D. Md. Feb. 5, 2015).

86. See *Hutchison*, 2018 U.S. Dist. LEXIS 50186 at *2; *Holland v. Cedar Creek Mining, Inc.*, 198 F.R.D. 651, 653 (S.D.W. Va. 2001).

87. *Crump*, 2015 U.S. Dist. LEXIS 187323 at *2–3.

88. *Id.* at *2.

89. *Livingston*, 2019 U.S. Dist. LEXIS 103064 at *5.

90. *Thorp Revocable Trust*, 57 F. Supp. 3d at 517.

to make substantive changes to a deposition if the changes are contradictory, but allows a party to make changes that explain, clarify, or correct the original statement when the party obtains knowledge of new facts pertaining to the original question.⁹¹ The District of Maryland does not allow substantive changes that are contradictory to the original testimony, and the court will review all changes in order to strike contradictory changes.⁹² Thus, the district courts of West Virginia, Virginia, and South Carolina generally allow substantive changes, whereas district courts in North Carolina and Maryland do not allow substantive changes.⁹³

The Sixth Circuit comprises Michigan, Ohio, Kentucky, and Tennessee.⁹⁴ In *Jermano v. Graco Children's Products*, the United States District Court for the Eastern District of Michigan granted a

motion to strike an untimely errata sheet.⁹⁵ The court relied upon a non-binding, unpublished Sixth Circuit opinion that did not allow substantive changes, and a binding, published opinion that explained in dicta that the court "did not hold that a deponent may make substantive changes" to a deposition transcript, but that the deponent could have made those changes.⁹⁶ District courts in Ohio, Kentucky, and Tennessee do not allow parties to make substantive changes to deposition testimony.⁹⁷ In summary, Michigan federal district courts allow substantive changes, whereas federal district courts in Ohio, Kentucky, and Tennessee do not allow substantive changes.⁹⁸

The Eighth Circuit comprises North Dakota, South Dakota, Nebraska, Minnesota, Missouri, Iowa, and Arkansas. The Eighth Circuit does not have a case on point, nor have the district courts in

91. *Deloach*, 206 F.R.D. at 571–73.

92. *Green*, 2015 U.S. Dist. LEXIS 13654 at *4–5.

93. See *Hutchison*, 2018 U.S. Dist. LEXIS 50186 at *2; *Holland*, 198 F.R.D. at 653; *Crump*, 2015 U.S. Dist. LEXIS 187323 at *2–3; *Livingston*, 2019 U.S. Dist. LEXIS 103064 at *5; *Thorp*, 57 F. Supp. 3d at 517; *Green*, 2015 U.S. Dist. LEXIS 13654 at *4–5.

94. See *Jermano*, 2015 WL 1737548 at *1; *Hall v. U.S. Cargo & Courier Serv. LLC*, No. 2:16-cv-330, 2019 WL 2524424 at *1 (S.D. Ohio June 17, 2019); *James T. Scatuorchio Racing Stable*, 2014 WL 1744848 at *1; *Caudill Seed & Warehouse Co. v. Jarrow Formulas, Inc.*, No. 3:13-CV-82-CRS, 2019 WL 1435934 at *1 (Mar. 29, 2019); *Lewis v. Hawkins*, No. 3:16-CV-315-TAV-HBG, 2017 U.S. Dist. LEXIS 162003 at *1 (E.D. Tenn. Sept. 28, 2017); *Jeffries v. Emerson Indus. Automation*, No. 14-cv-2431-shl-tmp, 2015 U.S. Dist. LEXIS 178980 at *1 (W.D. Tenn. Aug. 6, 2015).

95. *Jermano*, 2015 WL 1737548 at * 1.

96. *Id.* at *7–8; *Trout v. FirstEnergy Generation Corp.*, 339 Fed. App'x 560, 566 (6th Cir. 2009); *Carter v. Ford Motor Co.*, 561 F.3d 562, 568 (6th Cir. 2009).

97. See *Hall v. U.S. Cargo & Courier Serv. LLC*, No. 2:16-cv-330, 2019 WL 2524424 at *4–6 (S.D. Ohio June 17, 2019); *James T. Scatuorchio Racing Stable v. Walmac Stud Mgmt. LLC*, No. 5:11-374-DCR, 2014 WL 1744848 at *4 (E.D. Ky. Apr. 30, 2014); *Caudill Seed & Warehouse Co. v. Jarrow Formulas, Inc.*, No. 3:13-CV-82-CRS, 2019 WL 1435934 at *8 n. 1 (W.D. Ky. Mar. 29, 2019); *Lewis v. Hawkins*, No. 3:16-CV-315-TAV-HBG, 2017 U.S. Dist. LEXIS 162003 at *16–17 (E.D. Tenn. Sept. 28, 2017); *Jeffries v. Emerson Indus. Automation*, No. 14-cv-2431-shl-tmp, 2015 U.S. Dist. LEXIS 178980, at *3 (W.D. Tenn. Aug. 6, 2015).

98. See *Jermano*, 2015 WL 1737548 at *1; *Hall v. U.S. Cargo & Courier Serv. LLC*, No. 2:16-cv-330, 2019 WL 2524424 at *4–6 (S.D. Ohio June 17, 2019); *James T. Scatuorchio Racing Stable v. Walmac Stud Mgmt. LLC*, No. 5:11-374-DCR, 2014 WL 1744848, at *4 (E.D. Ky. Apr. 30, 2014); *Caudill Seed & Warehouse Co.*, 2019 WL 1435934 at *8 n. 1; *Lewis*, 2017 U.S. Dist. LEXIS 162003 at *16–17; *Jeffries*, 2015 U.S. Dist. LEXIS 178980 at *3.

North Dakota and Arkansas ruled on whether to allow substantive changes in deposition testimony.⁹⁹ One South Dakota district court held that it does not allow substantive changes to deposition testimony, similar to the Seventh and Tenth Circuits.¹⁰⁰ A court in the Eastern District of Missouri allowed all of plaintiff's changes to deposition testimony because none of plaintiff's requested changes were considered contradictory.¹⁰¹ The federal courts in Nebraska, Minnesota, and Iowa allow substantive changes to deposition testimony.¹⁰² In summary, 1) federal courts in North Dakota and Arkansas do not have an opinion on the issue; 2) federal courts in Nebraska, Minnesota, and Iowa allow substantive changes; and 3) federal courts in South Dakota and Missouri do not allow substantive changes.¹⁰³

Whether a party is allowed to make substantive changes to deposition testimony varies in a number of district courts.¹⁰⁴ The District of Columbia, together with the Fourth, Sixth, and Eighth Circuits, do not have appellate precedent on the issue.¹⁰⁵ Some district courts, as in North Dakota and Arkansas, do not have an opinion on the issue.¹⁰⁶ But the rest of the districts have opinions on the issue, generally following either the majority's or minority's interpretation of Fed. R. Civ. P. 30(e)(1).¹⁰⁷

99. See *Wigg v. Sioux Falls Sch. Dist.* 49-5, 274 F. Supp. 2d 1084 (D.S.D. 2003); *In re Genetically Modified Rice Litig.*, Nos. 4:06-md-1811 cdp, 4:08-cv-499-cdp, 2010 WL 3938376 at *1 (D. Mo. Oct. 5, 2010); *Brown v. West Corp.*, No. 8:11cv284, 2014 U.S. Dist. LEXIS 62476, at *1 (D. Neb. May 6, 2014); *Murphy v. Piper*, No. 16-2623-DWF/BRT-, 2018 WL 5875486 at *1 (D. Minn. Nov. 9, 2018); *Cham v. McNeilus Truck & Mfg.*, No. 11-2569-DWF/JJG, 2012 U.S. Dist. LEXIS 197001 at *1 (D. Minn. July 9, 2012); *Platts v. Kelly Servs.*, No. C14-3026-mwb, 2015 WL 3378257 at *1 (N.D. Iowa May 26, 2015).

100. See *Wigg*, 274 F. Supp. 2d at 1090.

101. *In re Genetically Modified Rice Litig.*, 2010 WL 3938376 at *2.

102. See *Brown v. West Corp.*, 2014 U.S. Dist. LEXIS 62476 at *6–7; *Murphy v. Piper*, No. 16-2623-DWF/BRT, 2018 WL 5875486 at *3 (D. Minn. Nov. 9, 2018); *Cham*, 2012 U.S. Dist. LEXIS 197001 at *8; *Platts*, 2015 WL 3378257 at *5–8.

103. See *Wigg*, 274 F. Supp. 2d at 1090–1092; *In re Genetically Modified Rice Litig.*, 2010 WL 3938376 at *2; *Brown*, 2014 U.S. Dist. LEXIS 62476 at *6–7; *Murphy*, 2018 WL 5875486 at *3; *Cham*, 2012 U.S. Dist. LEXIS 197001 at *8; *Platts*, 2015 WL 3378257 at *5–8.

104. See *Jackson v. Teamsters Local Union 922*, 310 F.R.D. 179, 181 (D.D.C. 2015); *Thorp Revocable Trust*, 57 F. Supp. 3d 508, 517 (E.D.N.C. 2014); *Jermano*, No. 13-cv-10610, 2015 WL 1737548, at *5–7 (E.D. Mich. Apr. 16, 2015); *Wigg*, 274 F. Supp. 2d 1084, 1090 (D.S.D. 2003).

105. See *Jackson*, 310 F.R.D. at 181; *Thorp Revocable Trust*, 57 F. Supp. 3d at 517; *Jermano*, 2015 WL 1737548 at *5–7 (E.D. Mich. Apr. 16, 2015); *Wigg*, 274 F. Supp. 2d at 1090.

106. See *Wigg*, 274 F. Supp. 2d at 1090.

107. See *Jackson*, 310 F.R.D. at 181; *Thorp Revocable Trust*, 57 F. Supp. 3d at 517; *Jermano*, 2015 WL 1737548 at *5–7; *Wigg*, 274 F. Supp. 2d at 1090.

A Reason for the Change

The final procedural requirement for changes to deposition testimony under Fed. R. Civ. P. 30(e)(1) is to state a reason for the change.¹⁰⁸ Most, if not all, courts hold that Rule 30(e)(1) clearly requires a reason for the change made, and a motion to strike an errata sheet will succeed if a reason for the change is not provided.¹⁰⁹ In *Podell v. Citicorp Diners Club*, the Second Circuit held, “the language of the Rule places no limitations on the type of changes that may be made[,] . . . nor does the Rule require a judge to examine the sufficiency, reasonableness, or legitimacy of the reasons for the changes.”¹¹⁰ In *Hutchison v. Ethicon, Inc.* and *Holland v. Cedar Creek Mining, Inc.*, a West Virginia district court granted motions to strike errata sheets because the errata sheets did not contain reasons for the substantive changes.¹¹¹ Some courts are more strict and require more than just a one-word reason for the change. In *Jackson v. Teamsters Local Union*,¹¹² the United States District Court for the District of Columbia granted a motion to strike substantive changes because the substantive changes were only accompanied by a one-word reason that failed

108. See Fed. R. Civ. P. 30(e)(1).

109. See *In re Ethicon Inc.*, 2018 U.S. Dist. LEXIS 50186 at *2.

110. *Podell*, 112 F.3d at 103.

111. *Hutchison*, 2018 U.S. Dist. LEXIS 50186 at *2; *Holland v. Cedar Creek Mining, Inc.*, 198 F.R.D. 651, 652 (S.D.W. Va. 2001).

112. *Jackson*, 310 F.R.D. at 186.

113. See *Hutchison*, 2018 U.S. Dist. LEXIS 50186, at *2; *Holland*, 198 F.R.D. at 652; *Jackson*, 310 F.R.D. at 186; *Podell*, 112 F.3d at 103.



to provide any convincing explanation for the change. Overall, Fed. R. Civ. P. 30(e)(1) does not describe the scope of the reason for the change, but it seems clear from the case law that a reason needs to be provided when a deponent makes a change to deposition testimony.¹¹³

Making Corrections to Depositions in State Court

As examples of the practice in state courts, the rules governing changes to deposition testimony in Florida, New York, and California are similar to Fed. R. Civ. P. 30(e)(1). The state rules, arguably, are not explicit as to what types of changes are allowed.¹¹⁴ The state courts apply their rules governing deposition changes similarly to how the federal courts that sit in their states apply Fed. R. Civ. P. 30(e)(1).¹¹⁵

Florida

Florida Rule of Civil Procedure 1.310 states that “[a]ny changes in form or substance that the witness wants to make must be listed in writing by the officer with a statement of the reasons given by the witness for making the changes.”¹¹⁶ Generally, Florida state courts allow parties to make substantive changes, and the burden

is on the opposing party to seek to reopen depositions. In *Feltner v. Internationale Nederlanden Bank N.V.*,¹¹⁷ the plaintiff submitted an errata sheet that contained sixty-one changes. Florida’s Fourth District Court of Appeal held that Florida Rule of Civil Procedure 1.310(3) does not place a limitation on the changes a deponent can make, and thus the deponent can make “change[s] of any nature, no matter how fundamental or substantial.”¹¹⁸ However, when a deponent makes substantial changes, the opposing party can reopen the deposition to inquire about the changes.¹¹⁹ Similarly, in *Motel 6, Inc. v Dowling*, a deponent made three changes to his deposition testimony and the deponent was not present at trial.¹²⁰ The issue was whether the deponent’s changes could be permitted at trial without the deponent being present for cross-examination. Florida’s First District Court of Appeal held that the changes were permitted and that it is the opposing party’s burden to reopen depositions when the other party submits an errata sheet.¹²¹

114. See *Feltner v. Internationale Nederlanden Bank, N.V.*, 622 So. 2d 123, 124 (Fla. 4th Dist. Ct. App. 1993); *Motel 6, Inc. v. Dowling*, 595 So. 2d 260, 260 (Fla. 1st Dist. Ct. App. 1992); *Cillo v. Resjefal Corp.*, 295 A.D.2d 257 (N.Y. App. Div. 2002); *Carrero v. N.Y.C. Hous. Auth.*, 162 A.D.3d 566, 566–67 (N.Y. App. Div. 2002); *Horn v. 197 5th Ave. Corp.*, 999 N.Y.S.2d 111, 112 (App. Div. 2014); *Lieblich v. Saint Peter’s Hosp.*, 977 N.Y.S.2d 780, 785 (App. Div. 2013); *Marine Tr. Co. v. Collins*, 243 N.Y.S.2d 993, 994 (App. Div. 1963); *Fahy v. Pisano*, No. 315225, 2002 Cal. Super. LEXIS 561 at *4–6 (Cal. App. Dep’t. Super. Ct. 2002).

115. See *Feltner*, 622 So. 2d at 124; *Motel 6, Inc.*, 595 So. 2d at 260; *Cillo*, 295 A.D.2d at 257; *Carrero*, 162 A.D.3d at 566–67; *Horn*, 999 N.Y.S.2d at 112; *Lieblich*, 977 N.Y.S.2d at 785; *Marine Trust Co.*, 243 N.Y.S.2d at 994; *Fahy*, 2002 Cal. Super. LEXIS 561 at *4–6.

116. Fla. R. Civ. P. 1.310.

117. *Feltner*, 622 So. 2d at 124.

118. *Id.*

119. *Id.*

120. *Motel 6, Inc.*, 595 So. 2d at 260.

121. *Id.* at 261.

In comparison, the United States Court of Appeals for the Eleventh Circuit held in *Norelus v. Denny's, Inc.*, as explained above, that a party could not make substantive changes because of the unreasonably long errata sheet containing 868 changes.¹²² Federal district courts in Florida, as cited below, have not followed the holding in *Norelus* and have continued to allow substantive changes in Florida.¹²³ Thus, except for *Norelus v. Denny's*, the federal and state view are the same, and the courts allow substantive changes.¹²⁴

New York

Under New York's Civil Practice Law and Rules § 3116, "any changes in form or substance which the witness desires to make shall be entered at the end of the deposition with a statement of the reasons given by the witness for making them."¹²⁵ Generally, New York state courts allow substantive changes, but, as in Florida, the changes must be accompanied by sufficient reasons.¹²⁶ In *Carrero v. New York City Housing Authority*, New York's Appellate Division for the First Department granted the defendant's motion to strike



the plaintiff's errata sheet because the plaintiff did not provide a sufficient explanation for the substantive changes.¹²⁷ Similarly, in *Horn v. 197 5th Avenue Corporation*, the Appellate Division for the Second Department granted the defendant's motion to strike the plaintiff's errata sheet because the plaintiff did not provide sufficient

122. See *Norelus*, 628 F.3d at 1280.

123. See *Architectural Ingenieria Siglo XXI LLC, v. Dom. Rep.*, No. 13-20544-civ-moore/mcailey, 2016 U.S. Dist. LEXIS 186226 at *5 n. 1 (S.D. Fla. Dec. 14, 2016); *DS Waters of Am., Inc. v. Fontis Water Inc.*, No. 1:10-cv-0335-scj, 2011 WL 13122270 at *9–10 (N.D. Ga. Dec. 13, 2011); *Ala. Aircraft Indus., Inc. v. Boeing Co.*, No. 2:16-mc-01216-rdp, 2017 U.S. Dist. LEXIS 211996 at *7–10 (N.D. Ala. May 22, 2017).

124. See *Architectural Ingenieria Siglo XXI LLC*, 2016 U.S. Dist. LEXIS 186226 at *5 n. 1; *DS Waters of Am., Inc.*, 2011 WL 13122270 at *9–10; *Ala. Aircraft Indus., Inc.*, 2017 U.S. Dist. LEXIS 211996 at *7–10.

125. N.Y. C.P.L.R. 3116.

126. *Cillo v. Resjefal Corp.*, 295 A.D.2d 257, 257 (N.Y. App. Div. 2002).

127. *Carrero v. N.Y.C. Hous. Auth.*, 162 A.D.3d 566, 566–67 (N.Y. App. Div. 2002).

explanations for the numerous critical changes.¹²⁸ However, in *Lieblich v. Saint Peter's Hospital*, the Appellate Division for the Third Department allowed the errata sheet because it was accompanied by a sufficient reason for the changes.¹²⁹ Lastly, in *Marine Trust Company v. Collins*, the Appellate Division for the Fourth Department explained that proper/sufficient reasons were “either that it is an incorrect transcript or that his present recollection of the facts is more accurate, and he may then state what his corrected answer is and give any other explanation he desires with respect to his prior answer.”¹³⁰

Like the United States Court of Appeals for the Second Circuit, the New York state appellate courts have held that Fed. R. Civ. P. 30(e)(1) does not limit the type of changes allowed.¹³¹ The New York Court of Appeals has been silent on the issue, but the lower New York state courts allow substantive changes and require a general reason for the change.¹³² Thus, the federal and state view are the same on the matter of substantive changes.¹³³ But the federal and

state views are different as to the reason needed for the deposition change, because the New York state courts need a sufficient reason, whereas the federal courts require any reason.¹³⁴

California

California Code of Civil Procedure § 2025.530 provides that “the deponent, either in person or by signed letter to the deposition officer, may change the substance of the answer to any question.”¹³⁵ In *Fahy v. Pisano*, the court did not explicitly mention whether California courts allow substantive changes, although California state courts seem to imply that they encourage the use of an errata sheet only for typos.¹³⁶ The implied language suggests that California state courts only allow typographical changes to deposition testimony instead of substantive changes, and this is in line with the federal court’s interpretation of Fed. R. Civ. P. 30(e)(1) in the Ninth Circuit.¹³⁷

128. *Horn v. 197 5th Ave. Corp.*, 999 N.Y.S.2d 111, 112 (App. Div. 2014).

129. *Lieblich*, 977 N.Y.S.2d at 785.

130. *Marine Trust Co.*, 243 N.Y.S.2d at 994.

131. See *Podell*, 112 F.3d at 103.

132. See *Cillo*, 295 A.D.2d at 257; *Horn*, 999 N.Y.S.2d at 112; *Lieblich*, 977 N.Y.S.2d at 785; *Marine Trust Co.*, 243 N.Y.S.2d at 994.

133. *Podell*, 112 F.3d at 103.

134. *Id.*

135. Cal. Civ. Proc. Code § 2025.530.

136. See *Fahy*, 2002 Cal. Super. LEXIS 561 at *4–6.

137. *Id.*



Conclusion

In federal courts, per Fed. R. Civ. P. 30(e)(1), a court officer will notify deponents after a deposition is completed to inform them that the deposition transcript is available for review.¹³⁸ A deponent then has thirty days from that notification to review the deposition transcript, and to make “changes in form or substance” to the deposition transcript and provide a reason for the change.¹³⁹ Fed.

R. Civ. P. 30(e)(1) does not explicitly state what type of changes are allowed.¹⁴⁰ Hence, the issue is whether the deponent can make substantive changes or if the deponent can only make typographical changes. Federal courts are split on that question.¹⁴¹ The majority view follows a plain reading of Fed. R. Civ. P. 30(e)(1) and allows substantive changes with subsequent measures

138. Fed. R. Civ. P. 30(e)(1).

139. *Id.*

140. See *Walker v. George Koch Sons, Inc.*, No. 2:07cv274 KS-MTP, 2008 U.S. WL 4371372 at *5–6 (S.D. Miss. Sept. 18, 2008).

141. See *Green*, 2015 U.S. Dist. LEXIS 13654 at *4.

such as reopening depositions and making the deponent pay for reopened depositions left to the judge's discretion.¹⁴² The minority view is more restrictive and only allows corrective changes to deposition testimony.¹⁴³ Most, if not all, federal courts require a reason for the change of the deposition testimony on an accompanying errata sheet; however, the sufficiency required for the reason for the change depends on the court.¹⁴⁴

Overall, in federal court, whether a party may make substantive changes to deposition testimony varies by jurisdiction. The District of Columbia and district courts in the Fourth, Sixth, and Eighth Circuits do not have precedential decisions.¹⁴⁵ In some states within these circuits, such as North Dakota and Arkansas, there is no state court opinion on the issue. The rest of the circuits do have at least a district court opinion on the issue that is in line with either the majority or minority view.¹⁴⁶ When looking at state rules of

procedure governing deposition changes in Florida, New York, and California, the rules are similar to Fed. R. Civ. P. 30(e)(1) in that they are not explicit as to what types of changes are allowed.¹⁴⁷ The states apply state rules governing deposition changes similarly to their federal court counterparts.¹⁴⁸ Whether substantive changes are allowed to a party's deposition testimony in state court proceedings depends on the jurisdiction.¹⁴⁹

So, what does this body of case law mean for the lawyer and client reviewing a client's deposition and considering changes? It has been argued that Fed. R. Civ. P. 30(e)(1) and state rules of civil procedure governing deposition changes in Florida, New York, and California do not explicitly state what changes are allowed. This lack of clarity has led to a divide in how courts interpret the rules.¹⁵⁰ Generally, the text and purpose of these rules support a broad reading.¹⁵¹ Some courts are concerned about litigators

142. See *Pina*, 740 F.3d at 791–92; *Podell*, 112 F.3d at 103; *EBC, Inc.*, 618 F.3d at 267; *Gonzalez*, 689 F.3d at 480.

143. See *Hambleton Bros. Lumber Co.*, 397 F.3d at 1226.

144. See *id.* at 1224–25.

145. See *Jackson*, 310 F.R.D. at 181; *Thorp Revocable Trust*, 57 F. Supp. 3d at 517; *Jermano*, 2015 WL 1737548 at *5–7; *Wigg*, 274 F. Supp. 2d at 1090.

146. *Id.*

147. See Fla. R. Civ. P. 1.310; N.Y. C.P.L.R. 3116; Cal. Civ. Proc. Code § 2025.530.

148. See *Feltner*, 622 So. 2d at 124; *Motel 6, Inc.*, 595 So. 2d at 260; *Cillo*, 295 A.D.2d at 257; *Carrero*, 162 A.D.3d at 566–67; *Horn*, 999 N.Y.S.2d at 112; *Lieblich*, 977 N.Y.S.2d at 785; *Marine Trust Co.*, 243 N.Y.S.2d at 994; *Fahy*, 2002 Cal. Super. LEXIS 561 at *4–6.

149. See *Green*, 2015 U.S. Dist. LEXIS 13654 at *4.

150. See Kirin K. Gill, Depose and Expose: The Scope of Authorized Deposition Changes Under Rule 30(e), 41 U.C. Davis L. Rev. 357, 384 (2007); *Feltner*, 622 So. 2d at 124; *Motel 6, Inc.*, 595 So. 2d at 260; *Cillo*, 295 A.D.2d at 257; *Carrero*, 162 A.D.3d at 566–67; *Horn*, 999 N.Y.S.2d at 112; *Lieblich*, 977 N.Y.S.2d at 785; *Marine Trust Co.*, 243 N.Y.S.2d at 994; *Fahy*, 2002 Cal. Super. LEXIS 561 at *4–6.

151. *Gill*, *supra* n. 150, at 384.

abusing the rules that allow changes to depositions by using the rules to unfairly benefit their client. However, arguably, this concern cannot overshadow the interest in fair litigation.¹⁵² Trial judges have discretion to prevent abuse of deposition changes by reopening deposition, making the deponent pay for reopened depositions, etc.¹⁵³ Deposition transcripts can still be used to impeach a witness.¹⁵⁴ However, when a deposition is used in lieu of live testimony, some courts argue that if there are substantive changes to a deposition transcript, attorneys at trial cannot use the deposition transcript on issues where there have been changes.¹⁵⁵ But, in the case of a witness who is present in court, attorneys are allowed to question the deponent-witness at trial regarding the substantive changes, and the attorney may use the witness's response for an effective live impeachment. Regardless of whether the deponent is available, counsel can emphasize the trustworthiness of the substituted answer and allow the fact-finder to decide whether the answer given at deposition or the changed answer was true.¹⁵⁶ An attorney who allows a deponent to make bad faith substantive changes may subject a witness to

a significant impeachment at trial or cost the attorney credibility before the fact-finder.¹⁵⁷ The possibility of serious adverse consequences at trial, on motions for summary judgment, or in settlement, and malpractice and ethical concerns, should deter bad faith substantive changes.¹⁵⁸ Courts should broadly interpret the rules that govern deposition changes and allow reasonable substantive changes to depositions.¹⁵⁹

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152. See *id.* at 366.

153. *Id.*; see also *Pina*, 740 F.3d at 791–92; *Podell*, 112 F.3d at 103; *EBC, Inc.*, 618 F.3d at 267; *Gonzalez*, 689 F.3d at 480.

154. A. Darby Dickerson, Deposition Dilemmas: Vexatious Scheduling and Errata Sheets, 12 *Geo. J. Legal Ethics* 1, 4 (1998).

155. *Id.*

156. Ilya A. Lipin, Litigation Tactics Addressing Changes to Deposition Testimony Through Rule 30(e) Errata Sheet Corrections, 63 *Ark. L. Rev.* 741, 754 (2010).

157. See *id.* at 754–55.

158. *Id.*

159. *Gill, supra.* 150, at 384–85.