

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THOMAS KELLY,)	
)	
<i>Plaintiff,</i>	)	Case No. 24 C 05354
)	
v.	)	Hon. Judge Thomas M. Durkin
	)	District Judge
REYNALDO GUEVARA, <i>et al.</i> ,)	
	)	Hon. Magistrate Judge Laura K.
<i>Defendants.</i>	)	McNally
)	
)	
)	

JOSE TINAJERO,)	
)	
<i>Plaintiff,</i>	)	Case No. 24 C 01598
)	
v.	)	Hon. Judge Thomas M. Durkin
	)	District Judge
REYNALDO GUEVARA, <i>et al.</i> ,)	
	)	Hon. Magistrate Judge Laura K.
<i>Defendants.</i>	)	McNally
)	
)	
)	

JOHN MARTINEZ,)	
)	
<i>Plaintiff,</i>	)	Case No. 23 C 01741
)	
v.	)	Hon. Judge Thomas M. Durkin
	)	District Judge
REYNALDO GUEVARA, <i>et al.</i> ,)	
	)	Hon. Magistrate Judge Laura K.
<i>Defendants.</i>	)	McNally
)	
)	
)	

**PLAINTIFF JOHN MARTINEZ’S RESPONSE IN OPPOSITION TO THIRD-PARTY
RUBENSTEIN’S MOTION TO EXTEND HIS DEPOSITION**

Plaintiff John Martinez, by his undersigned counsel, respectfully submits this response in opposition to third-party witness Rubenstein’s motion to extend the time of his deposition in this case beyond the seven hours permitted by Federal Rule of Civil Procedure 30(d)(1), Dkt. 224, stating as follows:

1. Plaintiff Martinez’s deposition in this action took place last week on Tuesday, March 18, 2025, lasting for seven hours on the record.

2. Before turning to the merits, it is important to note that Mr. Rubenstein did not confer with Plaintiff’s counsel prior to filing his motion, in violation of the Federal and Local Rules. Mr. Rubenstein certifies compliance with Local Rule 37.2, but that certification does not comply with the Rules: On the morning after Plaintiff Martinez’s deposition, March 19, counsel for Mr. Rubenstein emailed at 10 a.m. providing a window the same afternoon to confer. Plaintiff’s counsel was occupied that day and could not confer in detail, but the parties set out their initial positions in the joint status report filed with the Court. Dkt. 222. Without further follow-up, on March 20, Mr. Rubenstein filed his motion. Dkt. 224

3. On the merits, it is critical to point out that Mr. Rubenstein is no longer a party in Plaintiff Martinez’s suit. Mr. Rubenstein and Plaintiff have settled their claims. All that remains between them is a joint motion they have filed seeking approval of that settlement. Dkt. 198. As a result, it is odd that Mr. Rubenstein takes the position that he is even a party who can demand additional time of Plaintiff Martinez, and he cites no authority supporting his view that the Court should extend the deposition of a party for additional questioning from a third party. See *Mother & Father v. Cassidy*, 338 F.3d 704, 711 (7th Cir. 2003) (noting that an extension requires a “good cause showing”); see also *Apollo v. Stasinopoulos*, No. 18 C 6475, 2021 WL 1414090, at

*2 (N.D. Ill. Apr. 14, 2021) (“The seven-hour limit imposed by Rule 30(d)(1) encourages efficiency in depositions. . . . [T]hat defendants wish to develop further areas of inquiry – or explore in greater depth those that were touched upon – is not ‘good cause’ to reopen a deposition.”). This Court should not extend Plaintiff’s deposition for a third party who has already settled with the Plaintiff to ask additional questions. The Court could stop there.

4. Addressing Mr. Rubenstein’s arguments, he states that he was only allowed to question Plaintiff Martinez for 10 minutes. But it was the responsibility of all counsel who intended to question Plaintiff to divide the seven hours among themselves in advance, and if they could not reach an agreement to raise the issue with the Court. It would undermine the time limits in Rule 30 entirely if counsel questioning a witness did not coordinate, ran out of time, and then every attorney who had not had time to question asked for additional time beyond the seven hours. Plaintiff should not bear the consequence of opposing counsel’s failure to coordinate in advance. See *Apollo*, 2021 WL 1414090, at *2 (“Not surprisingly, many cases have denied motions for additional time to conduct a deposition because the questioner often asked the ‘wrong’ questions, thus using up limited time that might have been better spent on the topics counsel claims they did not have the opportunity to sufficiently address.”); *CW v. Textron, Inc.*, No. 3:10-CV-87 PPS, 2012 WL 13042499, at *3 (N.D. Ind. July 19, 2012) (enforcing principle that parties must decide how to use their time properly by denying proposed additional deposition time because questioning would be duplicative and defendant had ample time to depose witness).

5. In addition, Mr. Rubenstein makes no showing that there was such a volume of subjects to ask Plaintiff about that seven hours was not enough time. Counsel for Defendants, for example, asked an hour or more of questions about Plaintiff’s past gang affiliation, including a

long line of questions about Latin King manifestos which Plaintiff testified clearly that he had never seen before. If there were central questions about the case that were displaced because of these lines of questioning, then that, too, was the result of poor planning or decisions made by defense counsel. *In re Sulfuric Acid Antitrust Litigation*, 230 F.R.D. 527, 532 (N.D. Ill. 2005) (“The 7-hour rule necessitates, especially in complex cases, that almost all depositions will be under-inclusive. The examiner therefore, must be selective and carefully decide how to apportion her time.”).

6. Mr. Rubenstein also has not made a showing that there were subjects he wanted to ask about that were not adequately covered by other counsel. He claims there were dramatic changes in Plaintiff’s testimony, pointing only to Plaintiff’s testimony that he was told he could go home if he signed the confession statement presented to him by Mr. Rubenstein. Dkt. 224 ¶ 6. But that is not new testimony at all. Plaintiff testified about this exchange and Mr. Rubenstein’s role in it during his criminal trial, see, e.g., Exhibit A (Criminal Trial Testimony of John Martinez) at Martinez 21220-21222 (Transcript at 233:5-235:20), and he included it in his post-conviction petition, see Exhibit B (Post-Conviction Petition) at 15 ¶ 52. Plaintiff provided testimony on this point at length during his deposition.¹

7. Finally, Plaintiff Martinez’s deposition is one of two depositions that has gone the full seven hours in this case (Plaintiff Kelly’s deposition today, March 25, was the second), and it is the only deposition in which there has been a request for an extension. An extension for Plaintiff Martinez’s deposition is not justified. Neither Plaintiff Kelly’s deposition (today) nor Plaintiff Tinajero’s deposition (last Friday) needed to last more than seven hours. In Plaintiff

¹ Where Plaintiff Martinez *did* provide testimony during his deposition that was different than his criminal trial testimony—specifically on the question whether he had seen co-Plaintiff Tinajero at the scene of the crime—Defendants’ counsel examined him at length about the change. On that point, Mr. Rubenstein appropriately does not contend in his motion that he was not allowed to ask questions that he had.

Tinajero's case, unlike this one, Mr. Rubenstein is still a party (they have not settled), and counsel for Mr. Rubenstein did not see the need to exceed the deposition limit during Plaintiff Tinajero's deposition, even though he is a party as to that Plaintiff. Moreover, the parties have worked cooperatively in this case to conduct reasonably limited depositions. All three Plaintiffs agreed to limit Defendant Guevara—the main police officer Defendant in each of their cases—to a combined total of five hours, much less than the limit in Rule 30.

8. Plaintiff Martinez should not be required to sit for an additional deposition in these circumstances. This Court should deny third-party Rubenstein's motion.

RESPECTFULLY SUBMITTED,

/s/ Steve Art

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CERTIFICATE OF SERVICE

I, Steve Art, an attorney, certify that on March 25, 2025, I filed the foregoing Plaintiff John Martinez's Response in Opposition to Third-Party Rubenstein's Motion to Extend His Deposition Time using the Court's CM/ECF system, which effected service on all counsel of record.

/s/ Steve Art
One of Plaintiff's Attorneys