

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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TONY A. BERGER,

Plaintiff,

v.

ORDER

21-cv-454-wmc

WOOD COUNTY SHERIFFS DEPT,  
BRANDON CHRISTIANSON, and  
ERIC MARTEN,

Defendants.

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Defendants' motion for summary judgment and their response to plaintiff's summary judgment motion are currently due on May 1, 2022. On February 9, 2022, defendants served plaintiff a proper deposition notice under Federal Rule of Civil Procedure 30(b)(1). (Dkt. #27-2.) That rule allows the party noticing the deposition to choose the time and place, and here defendants have specified March 4, 2022, at defense counsel's office in Madison, Wisconsin. Even so, plaintiff objects and asks the court to delay his deposition until after May 8, 2022.<sup>1</sup> (Dkt. #27.) In support, plaintiff expresses concern about what he perceives to be threatening language in defendants' notice and letter and speculates that defendants may exceed the deposition duration limitation set by Rule 30(d)(1). More germane, plaintiff further asserts that he is in Arizona until early May and cannot travel to Wisconsin right now without significant hardship because he is behind on

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<sup>1</sup> The court notes that plaintiff did not sign this request, as required by Federal Rule of Civil Procedure 11(a). Because plaintiff's deposition is rapidly approaching and the parties require guidance, the court will address his objection now, but plaintiff must sign "[e]very pleading, written motion and other paper" he submits in this matter, or the court will not consider it until he corrects the omission. Fed. R. Civ. P. 11(a) (instructing a court to strike an unsigned paper unless the omission is promptly corrected).

necessary work at his ranch and is preparing to hold a memorial service there for an immediate family member he has just lost.

The court is sympathetic to plaintiff's loss, but it will decline to intervene at this point to give the parties the opportunity to resolve this issue without court order. In fairness to defendants, plaintiff's proposed in-person deposition date falls after defendants' motion for summary judgment is due and would likely affect their ability to file that motion, causing delay. Moreover, plaintiff filed this lawsuit in the Western District of Wisconsin and should have known that at least some legal proceedings would necessarily involve his travel to Madison. Indeed, the general rule is that "plaintiff will be required to make himself . . . available for examination in the district in which suit was brought." 8A Wright & Miller, Federal Practice & Procedure § 2112 at 527. However, plaintiff suggests alternative means of taking his deposition, and Rule 30(b)(4) allows for a deposition to be taken by telephone or other remote means per stipulation of the parties or court order. If plaintiff's deposition could be taken by remote means, there does not seem to be a reason to delay it until his return to Wisconsin. But while the court sees room for compromise, missing is defendants' position with respect to plaintiff's concerns, or any indication from plaintiff that he has attempted to confer with defendants before requesting a court order. As noted in the preliminary pretrial conference order, the parties should attempt to resolve discovery disputes amongst themselves in good faith *before* seeking court intervention. (Dkt. #15 at 8.) The court would expect defendants, in light of plaintiff's circumstances, to make every reasonable accommodation in terms of location, date and time, and to provide plaintiff with an estimate for the length of the deposition. Accordingly, the court

will not intervene at this point, and deny the motion. If the parties are unable to resolve this issue of time and place after conferring in good faith, which means that *both* sides should be willing to compromise, they may then seek resolution from the court.

ORDER

IT IS ORDERED that plaintiff Tony A. Berger's request for court order for delay in appearance for deposition on Friday, March 4, 2022 (dkt. #27) is DENIED.

Entered this 22nd day of February, 2022.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge