

My deposition was taken in a Massachusetts case and there are some answers I would like to change, can I make changes and how are changes made?

11 October 2013

Yes, you can make changes to correct typographical and transcription errors, and in Massachusetts, you can make substantive changes as well, even if the changes are clarifying or contradictory. Smaland Beach Assoc., Inc. c. Genova, 461 Mass. 214, 228 (2012). The changes are to be made in the form of an “errata sheet” that typically appears at the end of the transcript, although you may use your own form. The right to make changes is not absolute and can be waived prior to the deposition. Typically the parties establish a deadline for the submission of an errata sheet, which is usually 30 days. However, there are a number of considerations one should undertake before making any changes through an errata sheet.

Making changes to deposition testimony through the use of an errata sheet is tricky business. In the *Smaland Beach* case, the Massachusetts Supreme Judicial court established rules for the use of errata sheets provided for by Mass. R. Civ. P. 30(e). Understand, that to say it straight, the use of an errata sheet can create suspicion and has the potential for abuse. This is why the author believes the SJC took the opportunity in 2012 to enunciated some rules.

Initially, any changes “must represent [the deponent’s] own good faith belief, and may not to be undertaken to simply to bolster the merits of a case.” Smaland Beach Assoc., Inc. v. Genova, 461 Mass. 214, 229-30 (2012). Procedural requirements must be followed, which include also providing reasons for the changes that “provide an adequate basis from which to assess their legitimacy.” Id. at 230

There are also a few “remedial measures” the SJC adopted. Id. If changes are substantive and they likely would have triggered further inquiry, the other party can reopen the deposition to inquire about the changes. Id. Judges can also put the costs of reopening the deposition on the deponent as well, “where fairness requires.” Id. at 230 fn. 25. Also, the original answers remain part of the record. Id. at 230. This means the deponent can be asked about those changes at a later date. In addition, if the rule allowing errata sheets has been exploited, such as for strategic gain, an attorney can be sanctioned. Id. As with any deposition, there can be additional considerations to take.

The bottom line is that if a deponent wants to make a change through an errata sheet, it is recommended to be done carefully, should be thought through, and with the advice of counsel. In the event you are involved in litigation in Massachusetts and seek advice on this or a similar subject, feel free to give us a call.

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