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### Okada v. Eighth Judicial Dist. Ct., 131 Nev. Adv. Op. 83 (Oct. 15, 2015)

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*Nevada Law Journal*

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## NEVADA RULES OF CIVIL PROCEDURE: DEPOSITIONS

### **Summary**

The Court determined that (1) NRCP 30 generally governs the taking of depositions but does not set restrictions as to where the deposition must take place; and (2) while NRCP 30 generally limits depositions to “1 day of 7 hours,”<sup>2</sup> NRCP 26(b)(2) sets for general considerations that district courts should take into account when determining whether the length of a depositions should deviate from the presumption one-day time frame.

### **Background**

In 2010, Wynn Resorts began an investigation to determine if Kazuo Okada, a Japanese citizen on Wynn Resorts’ board of directors, was engaged in business dealings that might render him an “unsuitable person” to sit on the board. Okada contemporaneously filed a suit against Wynn Resorts to produce certain documents. As part of this suit, Okada traveled to Las Vegas to be deposed. This deposition was fraught with difficulties, particularly due to the need of two translators. By 2012 the investigation had led Wynn Resorts’ board to conclude that Okada was an “unsuitable person.” This status authorized Wynn Resorts to redeem Okada’s stock shares in the company and the board issued him a promissory note for the shares. Okada refused the promissory note and Wynn Resorts instituted the underlying action.

As part of the discovery process, Wynn Resorts filed a notice of deposition of Okada. The deposition was scheduled to take place in Las Vegas over ten days. Okada moved for a protective order, asserted that as the defendant his deposition should be conducted where he resides (Hong Kong) or where the corporation does business (Tokyo) and that the deposition should not exceed three days as governed by NRCP 30. The district court denied Okada’s motion. Okada appealed arguing that the district court abused its discretion.

### **Discussion**

Usually the Nevada Supreme Court will not review a district court’s ruling on discovery because “[d]iscovery matters are within the district court’s sound discretion.”<sup>3</sup> The Court will consider a discovery-related writ petition “if an important issue of law needs clarification and public policy is served by this court’s invocation of its original jurisdiction.”<sup>4</sup> The Court exercised its discretion to consider Okada’s petition because it raises important issues of law that need clarification. This opinion sets forth basic frameworks for district courts to use in addressing issues regarding location and duration of depositions of parties.

#### *Deposition Location*

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<sup>1</sup> By Baylie Hellman.

<sup>2</sup> NEV. R. CIV. P. 30 (2015).

<sup>3</sup> *Club Vista Fin. Servs., LLC v. Eighth Judicial Dist. Court*, 128 Nev., Adv. Op. 21, 276 P.3d 246, 249 (2012).

<sup>4</sup> *Las Vegas Sands Corp. v. Eighth Judicial Dist. Court*, 130 Nev., Adv. Op. 61, 331 P.3d 876, 878-79 (2014).

Generally, NRCP 30 governs the taking of depositions, but the rule does not set forth any restrictions as to where the deposition must take place.<sup>5</sup> Protective orders, in turn, are governed by NRCP 26(c)(2), which permits a district court, upon a showing of good cause, to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, by ordering that a deposition “may be had only on specified terms and conditions, including a designation of the time or place.”<sup>6</sup> Thus, a deponent must show good cause for not being required to travel to the deposition location.<sup>7</sup> However, the Court recognized a “general rule,” independent of Rule 26(c), under which the deposition of a defendant takes place where the defendant resides or where the corporation has its principal place of business.

Based on this general rule, Okada argued that a presumption exists in favor of holding a defendant’s deposition where he resides or where the corporation has its principal place of business. The Court agreed that the defendant’s residence or corporation’s principal place of business are factors that should be considered when addressing a defendant’s motion for a protective order regarding the location of a deposition. But those factors do not necessarily outweigh others, such as cost, convenience, and litigation efficiency. The Court endorsed the approach taken by courts that consider the three factors of “cost, convenience and litigation efficiency.”<sup>8</sup> Similarly, the Court endorsed the approach taken by courts that consider a five factor test.<sup>9</sup> The Court noted that both tests provide a nonexhaustive list of factors that should be considered regarding the location of a defendant’s deposition.<sup>10</sup>

In this case, the Court found the record demonstrated that these factors influenced the district court’s decision making process. Here, both parties’ Las Vegas-based attorneys would have to travel to Tokyo instead of requiring only Okada to travel to Las Vegas, creating an affirmative burden on Wynn Resorts. The Court found the district court properly declined to create such a burden by not granting Okada’s motion.

#### *Deposition Duration*

NRCP 30(d)(1) states that a deposition is limited to 1 day of seven hours unless otherwise stipulated by the court.<sup>11</sup> Rule 26(b)(2) provides three considerations<sup>12</sup> that the districts courts can use to determine if a deviation from Rule 30 is necessary. Here the Court found that the district court’s decision was supported both by NRCP 26(b)(2)’s general considerations and the specific factors<sup>13</sup> of the case in question. Okada himself recognized the complexity of the case and acknowledged that the factors used in the district court’s

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<sup>5</sup> NEV. R. CIV. P. 30(a)(1) (“A party may take the testimony of any person, including a party, by deposition upon oral examination...”).

<sup>6</sup> NEV. R. CIV. P. 26(c)(2)

<sup>7</sup> *Cf. Cadent Ltd. v. 3M Unitek Corp.*, 232 F.R.D. 625, 629 (C.D. Cal. 2005) (recognizing that FRCP 26(c) requires the party seeking the protective order to establish “good cause”).

<sup>8</sup> *See e.g. Buzzeo v. Bd. Of Educ., Hempstead*, 178 F.R.D. 390, 393 (E.D.N.Y. 1998); *Mill-Run Tours, Inc. v. Khashoggi*, 124 F.R.D. 547, 550-51 (S.D.N.Y. 1989).

<sup>9</sup> *See* 7 James Wm. Moore et al., *Moore’s Federal Practice* § 30.20(1)(b)(ii) (3d ed. 2015).

<sup>10</sup> *See Club Vista*, 276 P.3d at 249.

<sup>11</sup> NEV. R. CIV. P. 30(d)(1).

<sup>12</sup> “(1) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source more convenient, less burdensome, or less expensive; (2) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (3) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties’ resources, and the importance of the issues at stake in the litigation.” Nev. R. Civ. P. 26 (2015).

<sup>13</sup> Including the use of translators, numerous and lengthy documents involved, and extensive period of time over which the events in question occurred.

decision would justify a three-day deposition. In the event that the deposition questions became redundant or unduly burdensome, Okada retained the option to move to have the deposition shortened.

### **Conclusion**

The Court found that the district court did not abuse its discretion in denying Okada's motion for a protective order and rejecting his three-day deposition proposal. The district court has broad discretion with regards to discovery procedure and Okada could not demonstrate good cause for having his deposition moved to a location other than Las Vegas. The district court did not arbitrarily or capriciously exercise its discretion and Okada's writ was denied.