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Voice of The Bar

Rule Doesn't Bar Conferences With Deponent During Breaks

Dear Editor:

Many readers may be misguided by certain comments made by Peter J. Lynch in his article titled *New Deposition Rules Turn Rambo Into a Potted Plant*, which appeared in the Oct. 28, 1996 issue of the *Law Journal* [146 N.J.L.J. 319]. His reading of N.J. Court Rule 4:14-3(f), concerning conferences between a deposition witness and defending counsel, is incorrect.

Mr. Lynch states that the amendment to N.J. Court Rule 4:14-3(f) does not permit conferences between deposition witnesses and defending counsel during breaks in the deposition and that, as a result, inquiries by interrogating counsel about such conferences are permissible and not subject to the attorney-client privilege. However, this was not and, more importantly, is not the rule in New Jersey. N.J. Court Rule 4:14-3(f) specifically states that such conferences are prohibited during the course of the deposition while testimony is being taken. Obviously, testimony is not taken during such breaks. Further, Judge Pressler, in her comments to the rule, notes that, in light of the foregoing language, the rule clearly does not address consultation during overnight, lunch, and other breaks. Pressler, *N.J. Court Rules (Gann)*, Comment 7 to R. 4:14-3. Accordingly, the amended rule does not prohibit counsel from conferring with a deponent during breaks in the deposition.

Thank you for your attention to this matter.

Gianfranco A. Pietrafesa