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Annie, Get Your Gun, But Please Don't Bring It to the Depo

Though being confronted with an armed deponent may seem improbable, it is worth considering what one can do if confronted with this scenario.

By **Brian Koosed and Priya Chadha** | January 31, 2019

You're in a straightforward commercial dispute in federal court. Eastern District of Virginia. You notice another party for a deposition. When you arrive, the deponent is armed with a handgun that he is authorized to carry under state law. What do you do? Do you proceed with the deposition? If so, do you change your strategy? Will you be less willing to push the deponent's buttons if he or she is carrying a weapon? And if you do take a less aggressive approach, does that raise ethical issues as to whether you are zealously serving your client's interests?

This hypothetical scenario is less far-fetched than it may sound. There are numerous reports of deponents (or attorneys themselves) drawing weapons at depositions. In fact, the authors' colleagues found themselves in such a situation when deposing a subpoenaed third party in litigation arising out of the "Unite the Right" protests in Charlottesville, Virginia. There, the deponent showed up armed but on the wrong date. Before his deposition, signs barring guns on the premises were erected outside the location where the deposition was to take place. When the deponent again arrived armed, the attorneys asked the deponent to put his gun in his car, citing the signs. He agreed.



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If you ever find yourself in a similar situation, knowing your options could provide some much-needed calm to an otherwise potentially nerve-wracking experience. This article looks to the gun laws in three exemplar states, and offers a number of potential solutions for dealing with this thorny problem.

Ways to Handle a Potentially Dickey Situation

Though the situation may seem tense, attorneys confronted with a lawfully armed deponent or opposing counsel have a number of options to defuse the situation:

- *Ask the gun owner to store the weapon in a car or other location:* The simplest approach may be to ask the gun owner to store the weapon in a car or some other secure location so that it is not available during the deposition. This may not be ideal because the gun is still nearby, but may be enough to allow the deposition to proceed without further delay.
- *Reschedule the deposition:* If the gun owner is not willing to storing the gun elsewhere, a prudent lawyer might consider rescheduling the deposition for another date or location. If you own the property where your legal office is located, you might insist that the deposition be scheduled there, so that you can effectively prohibit anyone from carrying a firearm onto the property. Take care to ensure that you comply with all state and local laws and provide notice that firearms are prohibited on your premises. If you do not own or control the property where your offices are located, consider asking the property owner to bar firearms or looking for other locations that have such a policy.
- *Schedule the deposition at a courthouse:* If none of the options discussed above would be plausible in your circumstances, consider scheduling the deposition at a courthouse if that is an option in your jurisdiction. Many states—including Virginia, Texas, and Florida—expressly prohibit the carrying of firearms at courthouses.
- *Seek a protective order requiring the deponent to appear unarmed:* Although experienced litigators may be hesitant to bother a court with discovery matters, one “last resort” option might be to seek a protective order from the court that requires the deponent to appear unarmed.

Representative State Gun Laws

Gun laws vary widely between states, making it difficult to provide a nationwide overview. For simplicity's sake, we'll examine the laws of three populous states as exemplars: Virginia, Texas and Florida.

Virginia

Under Virginia law, gun owners can openly carry hand guns or long guns. Owners must, however, obtain a concealed carry permit for handguns and must be at least 21 years old. Gun owners cannot carry weapons at several prohibited places, including courthouses, schools, and churches. Private property owners can use

signs to restrict or ban the carrying of weapons onto their property.

Texas

Texan gun owners cannot legally carry handguns outside the confines of the real property, motor vehicles or watercraft that they own or control, unless the owner: 1. has a license to carry; and 2. the handgun is concealed or worn in a holster. Guns are prohibited at several locations, including schools and courthouses. Texas law allows owners of private property to prohibit the carrying of weapons onto their property provided that they give oral or written notice. Written notice must be provided via a sign on the property that, among other things, contains certain language mandated by statute. If a gun owner is given notice and disregards it, he can be charged with criminal trespass.

Florida

Floridians are generally banned from openly carrying guns except in certain locations like their home or place of work. Gun owners can further obtain concealed carry licenses if they satisfy certain prerequisites. Firearms are prohibited in police stations, courthouses and schools. No Florida law specifically allows owners of private property to prohibit guns on their property, so "no guns" signs do not have the force of law. But if a gun owner is asked to leave private property and refuses to do so, they can be subject to criminal trespass charges.

Conclusion

Though being confronted with an armed deponent may seem improbable, it is worth considering what one can do if confronted with this scenario. Moving forward, state legislatures might also consider amending existing laws prohibiting carrying guns in courthouses to extend them to other locations being used in connection with legal proceedings. Doing so would preserve the integrity of the legal process and ensure that attorneys can safely fulfill their role as zealous advocates, consistent with their ethical obligations to their clients.

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