

# Depositions

## Basic Discovery CLE

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# Overview

1. Introduction
2. Types of Deponents
3. Method of Taking; Production at Deposition
4. Strategic Uses/Purposes of a Deposition
5. Preparing for a Deposition
6. Mechanics: When, Where, Notice
7. Taking a Deposition
8. Defending a Deposition
9. Additional Considerations

# Introduction

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*What is a deposition?*

# **Types of Deponents; Notice Required**

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1. Parties
2. Non-Parties
3. Corporate Representatives



# Method of Taking; Production at Deposition

1. In-person
2. Videotaped
3. By Telephone
4. Duces Tecum / Request for Documents
5. Upon Written Questions

# Why take a deposition?

## Strategic uses/purposes of a deposition

1. Uses of depositions in Court proceedings
  - a. Party
  - b. Expert
  - c. Unavailable witness

# Why take a deposition?

## Strategic uses/purposes of a deposition

2. Information gathering
  - a. Obtain documents
  - b. Authenticate
  - c. Support/defeat MSJ
3. Testing & evaluating witnesses
  - a. Impeachment
  - b. Determine what do & don't know (limit)

# Why take a deposition?

## Strategic uses/purposes of a deposition

4. Obtain admissions
5. Testing/supporting theories & themes
  - a. Yours
  - b. Opponent's
6. Educating/evaluating opponent
  - a. Encourage settlement
  - b. Learn opponent's view/theory

# Preparing your witness for a deposition

- Not “warm” conversation
- $Q \rightarrow A$ ,  $Q \rightarrow A$ ,  $Q \rightarrow A$
- Socially awkward pause
- Don’t give more than asked

# Preparing to take a deposition

## Case File

- Review pleadings, exhibits, & relevant law
  - ✓ elements of causes of action
  - ✓ elements of affirmative defenses
- Interrogatory answers
- Depositions of other witnesses or prior depositions of deponent

# Preparing for a deposition

## Documents

- Be familiar w/ relevant documents
- Incorporate into outline w/ exact language
- Have accessible w/ enough copies

# Preparing for a deposition

## The “Players” & “Game plan”

- Research opposing counsel
- Research witness
- Consider videotaping



# Preparing for a deposition

## *The Outline*

- NOT a script
- Adaptable → follow-up, listen
- Structure(s): chronological, topical (by subject), by document

# Mechanics: When, Where, Notice

- Reach out to opposing counsel for dates, location
- Notice, *or*
- Subpoena

# Taking the deposition

- Demonstrate that you're prepared
- Start strong; ground rules
- Relentlessly polite
- Focused → eye contact + engage
- Persistent → follow up
- Keep it simple

# Taking the deposition

- Asking questions
  - ✓ Approx. 5-7 words
  - ✓ 1 fact per question
  - ✓ Clear language, word choice
  - ✓ Be patient
  - ✓ Don't interrupt
  - ✓ Follow up

# Taking the deposition

## ➤ Following up

- ✓ Who?
- ✓ What?
- ✓ When?
- ✓ Why?
- ✓ Where?
- ✓ How?

→ Else → Next

# Defending a Deposition

## 1. Objections

- a. Have basis
- b. Don't say basis – *form only* – unless asked

## 2. Privilege

## 3. Suspending Deposition

# Attendance at Deposition

- Anyone can attend
- No witness sequestration

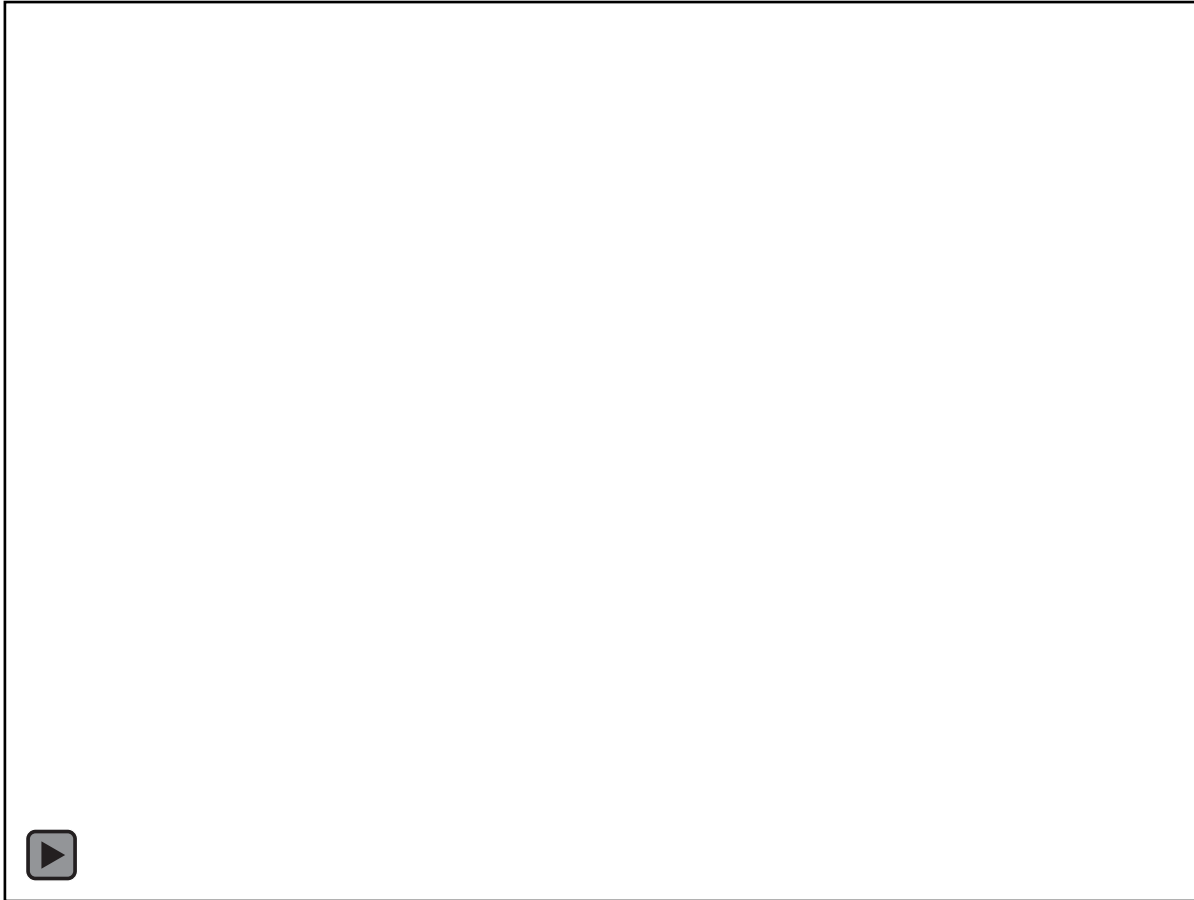
# **Additional Considerations**

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1. Experts
2. Difficult witnesses
3. Challenging opposing counsel



# What not to do...



# After the Deposition

1. Errata Sheet
2. Order the transcript?
3. File?

# *Questions?*

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