

**Presented:**  
2014 The Car Crash Seminar  
From Sign-Up to Settlement

July 31 – August 1, 2014  
Austin, Texas

## **Depositions**

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## **TABLE OF CONTENTS**

I.	INTRODUCTION.....	1
II.	DEPOSITIONS OF FACT WITNESSES.....	1
III.	DEPOSITIONS OF EXPERT WITNESSES.....	2
	A.    General Scope of Expert Discovery.....	2
	B.    Requests for Disclosure.....	3
	C.    Reports.....	3
	D.    Depositions of Experts - Timing and Authority.....	5
	E.    Opinion Testimony and Bases of Opinions.....	5
	F. <i>Daubert/Robinson</i> Issues.....	7
	1.  Four Hurdles.....	7
	2.  The Knowledge Hurdle.....	8
	3.  The Qualifications Hurdle.....	8
	4.  The Helpfulness Hurdle.....	8
	a.    Reliability.....	8
	b.    Relevance.....	9
	5.  The Foundation Data Hurdle.....	10
	G.    Keep the Following in Mind When Cross-Examining Experts.....	10
IV.	CONDUCT DURING DEPOSITIONS IN STATE COURT IN TEXAS.....	11
V.	KEY DIFFERENCES BETWEEN DEPOSITIONS IN FEDERAL COURT AND DEPOSITIONS IN STATE COURT IN TEXAS.....	13
	A.    Using Depositions at Trial.....	13

B.	Objections.....	13
C.	Instructing A Witness Not To Answer.....	14
D.	Private Conferences.....	15
E.	Time Limits.....	15
F.	Bad Behavior.....	15
VI.	PREPARATION FOR THE DEPOSITION OF THE KEY ADVERSE PARTY OR EXPERT.....	16
VII.	STRATEGY AND GOALS.....	17
A.	“Trial Depositions” Versus “Discovery Depositions”.....	17
B.	“Discovery Depositions”.....	18
C.	“Trial Depositions”.....	19
D.	“Hybrid Depositions”.....	19
VIII.	TECHNIQUES AND MINDSET.....	19
A.	The Cross-Examiner’s Demeanor and Attitude.....	19
B.	NITA’s “Funnel” Technique.....	21
C.	Myths of Cross-Examination.....	23
D.	Factors Dictating No Cross-Examination or Only Limited Cross-Examination...24	
E.	Irving Younger’s “Ten Commandments of Cross-Examination”.....	24
F.	Non-Traditional Sources of Guidance for Cross-Examination.....	25
1.	Non-Coercive Techniques Used By Spy Agencies and the Military.....	25
2.	Police Techniques.....	26
IX.	CONCLUSION.....	27

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# DEPOSITIONS

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## **I. INTRODUCTION**

Depositions are by far the most versatile discovery tool that trial lawyers have at their disposal. Depositions give parties an unmatched opportunity to probe, follow-up, and challenge witnesses and opposing parties. Depositions are excellent tools to: 1) determine what witnesses know and believe about relevant issues, 2) obtain helpful concessions and admissions from witnesses, and 3) test the strength of witnesses' knowledge and beliefs.

Meticulous preparation, a carefully formulated game plan, and a thorough understanding of the relevant rules and case law increase the deposing attorney's odds of accomplishing worthwhile strategic goals in depositions.

## **II. DEPOSITIONS OF FACT WITNESSES**

In advance of a deposition of a fact witness, discover all that is allowed under the rules about that fact witness from your opponent.

A party may obtain discovery of persons having knowledge of relevant facts, and information concerning the identity and location of persons with knowledge of relevant facts cannot be protected from discovery. *See* Tex. R. Civ. P. 192.3(c) & 192.5(c)(3). A party is entitled to: 1) names, addresses and telephone numbers of person having knowledge of relevant facts, 2) a brief description of the person's connection to the suit, and 3) any witness statements made by fact witnesses. *See* Tex. R. Civ. P. 192.3(c), 192.4(e) & 192.3(h). Before amendments to the Rules of Civil Procedure, witness statements could be shielded from discovery if taken in anticipation of litigation, but that is no longer true, and witness statements now must be produced by your opponent.

The discovery rules also allow any party to obtain discovery of the name, address, and telephone number of any person who is expected to be called to testify at trial. *See* Tex. R. Civ. P. 192.3(d) & 192.5(c)(1). A party is not entitled to obtain information about rebuttal or impeachment witnesses, unless the necessity of the testimony can reasonably be anticipated before trial. Tex. R. Civ. P. 192.3(d).

## **III. DEPOSITIONS OF EXPERT WITNESSES**

The Texas Rules of Civil Procedure set the boundaries for what you discover about your opponent's experts before and during the experts' depositions. Depositions are one of only three exclusive ways that a party can discover information about an opponent's experts in state court in Texas. The rules allow a party to discover information about testifying expert witnesses only through: 1) requests for disclosure, 2) depositions and 3) reports as permitted by the rules. See Tex. R. Civ. P. 195.1.

#### **A. General Scope of Expert Testimony**

Rule 192.3(e) of the Texas Rules of Civil Procedure controls the general scope of discovery for testifying and consulting experts. The rule provides:

*(e) Testifying and consulting experts. The identity, mental impressions, and opinions of a consulting expert whose mental impressions and opinions have not been reviewed by a testifying expert are not discoverable. A party may discover the following information regarding a testifying expert or regarding a consulting expert whose mental impressions or opinions have been reviewed by a testifying expert:*

*(1) the expert's name, address, and telephone number;*

*(2) the subject matter on which a testifying expert will testify;*

*(3) the facts known by the expert that relate to or form the basis of the expert's mental impressions and opinions formed or made in connection with the case in which discovery is sought, regardless of when and how the factual information was acquired;*

*(4) the expert's mental impressions and opinions formed or made in connection with the case in which discovery is sought, and any methods used to derive them;*

*(5) any bias of the witness;*

*(6) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared for the expert in anticipation of a testifying expert's testimony;*

*(7) the expert's current resume and bibliography.*

Tex. R. Civ. P. 192.3(e).

#### **B. Requests for Disclosure**

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

## Title search: Depositions

Also available as part of the eCourse

[Car Crash Litigation: Depositions, Voir Dire, plus Maximizing Storytelling at Opening and Closing](#)

First appeared as part of the conference materials for the  
2014 The Car Crash Seminar session  
"Depositions"