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**DEPOSITION STRATEGIES****Quentin Brogdon**

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## DEPOSITION STRATEGIES

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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

In advance of the deposition of the adverse expert, the deposing attorney should send the

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