

**Presented:
The University of Texas School of Law
22nd Annual
Labor and Employment Law Conference**

**May 12-13, 2015
AT&T Conference Center
Austin, Texas**

Depositions

**Viane Lopez Braun
Robert E. Sheeder
Malinda A. Gaul**

**VIANEI LOPEZ
BRAUN**
Buck Keenan LLP

ROBERT E. SHEEDER
Bracewell & Giuliani LLP

MALINDA A. GAUL
Gaul and Dumont
924 Camaron Street
San Antonio, Texas 78212
(210) 225-0685
(210) 320-3445 - facsimile
malindag@swbell.net

Depositions

I. Rules of Behavior

A. Texas Rules of Civil Procedure, Rule 199.5

An oral deposition must be conducted in the same manner as if the testimony were being obtained in Court during trial. Counsel are to cooperate with and be courteous to each other and to the witness. The witness is not to be evasive and should not unduly delay the examination. Private conferences between the witness and the attorney during the actual taking of the deposition are improper except for the purpose of determining whether a privilege should be asserted.

Objections are limited to “objection, leading,” “objection, form,” and “objection, nonresponsive” and are waived if not stated exactly in this manner. Any other objections are to be raised before the Court. If requested to explain an objection, the response must be clear and concise. Argumentative or suggestive objections or explanations waive the objection and can create grounds for terminating the deposition.

A witness can be instructed not to answer a question if it is necessary to preserve a privilege, comply with a Court order or the rules of civil procedure, protect a witness from an abusive question or one for which any answer would be misleading, or to obtain a ruling from the Court. When instructing the witness not to answer, the attorney must be nonargumentative and nonsuggestive in the explanation.

An attorney must not ask a question solely to harass or mislead the witness, for any other improper purpose, or without a good faith legal basis.

An attorney must not object, instruct a witness not to answer, or suspend the deposition unless there is a good faith factual and legal basis.

B. Federal Rules of Civil Procedure, Rule 30

An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A witness can be instructed not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the Court, or to present a motion to terminate or limit.

The Court may sanction a person who impedes, delays, or frustrates the fair examination of the witness.

A motion to terminate or limit the deposition may be made on the grounds the deposition is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party.

II. Purpose of a Deposition

Attorneys rely on deposition testimony to support or overcome motions for summary judgment, bolster negotiating positions, and impeach witnesses at trial.

Determine the purpose of each deposition you take and make sure you accomplish that purpose.

Deciding who to depose depends on the purpose of the deposition. Since motions for summary judgment are filed in almost all employment law cases, this is usually the main purpose for depositions. Therefore, determine what evidence is necessary to support or overcome the motion and decide who can best provide the evidence.

Pick the order of the depositions, based on the evidence to be solicited and any “surprise factor” you want to accomplish. The order will also be determined by whether you want to ask a witness questions about what another witness has said.

If you plan to use a deposition to bolster negotiations or at trial, decide whether a video would be more persuasive than the written transcript.

III. Tips and Strategies for Effective Depositions

Prior to taking a deposition, conduct written discovery, particularly request for production of documents.

Review the rules of civil procedure regarding depositions, to avoid disagreements over time limits, objections, and discussions between the witness and the attorney.

It is better to create a timeline or outline and not a list of questions, in order to

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First appeared as part of the conference materials for the
22nd Annual Labor and Employment Law Conference session
"Depositions"