

UT CLE 2023

Winning at Deposition: Skills and Strategy

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1. Preparation, Preparation, Preparation

In preparation for the deposition, you should research the applicable law, know well your theory of the case, and know the opposing party's likely positions. In order to take an effective deposition, you need to know what questions to ask, and to do so, you need to know the precise nature of the dispute, the key facts, and the applicable law.

- a. Examine earlier discovery, and identify any facts that may require development.
- b. Be organized. Have your exhibits labelled with the necessary copies. Don't waste your precious time!

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2. Video-Record Depositions

Video deposition testimony is more useful than simply reading deposition testimony into the record if the deponent is unavailable at trial. A good video deposition can be used effectively to replace an unavailable witness. It also can be effective to cross-examine the deponent if he or she appears at trial.

3. Framing Your Questions

Use language in your questions that you will likely use at trial. If your theme is the defendant unjustly “walked away” from a contract, you may wish to use a series of questions:

- 1) You signed this contract, did you not?
- 2) My client did as well?
- 3) My client did what he agreed to do?
- 4) But you decided to walk away from your obligations, did you not?

If a document covers multiple subjects, pick a shorthand description of it and use that description in your questions.



4. Don't Waste Time

Instead, get to the key issues that will inform you quickly about the witness's position.



5. "Yes" or "No" Answers

Lawyers defending depositions typically prepare witnesses to provide yes-or-no answers. You should nevertheless strive to get a good "sound bite" that speaks to major issues in the case.

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First appeared as part of the conference materials for the
2023 Winning at Deposition: Skills and Strategy session
"How to Overcome the Worst Problems at Depositions"