

Deposition Notes

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General:

Current deposition rules in most courts (see, for example, FRCP 30(e)) allow you to request an opportunity to review a written transcript of your deposition (or to view your videotaped deposition).

The scope of discovery, however, is limited. FRCP 26(c) protects you from answering questions that cause “annoyance, embarrassment, oppression, or undue burden or expense.”

Objections:

In many states what one spouse says to another is protected by the spousal privilege.

The Work Product Privilege:

“documents and tangible things ... prepared in anticipation of litigation or for trial” must be disclosed to an adversary only under the terms of a court order, and only if the adversary can show that it would cause undue hardship if disclosure weren’t granted. Even if a judge does order an attorney to disclose some trial preparation materials, the adversary can’t have access to materials that would disclose an attorney’s “mental impressions, conclusions, opinions, or legal theories.”

You can refuse to answer, saying that the information is your work product.

Misquotes or Mischaracterizes the Testimony

This objection arises when your adversary misstates what a deponent said earlier in a deposition.

Objection: Compound Question

A question is compound when it is essentially two questions phrased as one.

Objection: Vague

A question is vague when it does not make clear what information the questioner is seeking from the deponent.

Objection: Leading

A leading question is a question that, either through the way it is worded or the questioner’s tone of voice, suggests the answer the deponent should give. (See Federal Rule of Evidence 611(c).)

Objection: Calls for a Narrative Answer

A question “calls for a narrative answer” when it is overly broad or when it asks a deponent to testify to a series of events that unfolded over time.

Objection: Argumentative

An argumentative question asks a deponent to respond to your adversary’s argument rather than to a question.

Objection: Irrelevant

This objection asserts that evidence has no bearing on the issues in dispute in your lawsuit.(See Federal Rule of Evidence 401.)

Objection: Improper Opinion

This objection asserts that your adversary has asked a lay (nonexpert) witness to give an opinion on a matter that is beyond an average person’s everyday experience. (See Chapter 8 and Federal Rule of Evidence 701.)

Objection: **Lack of Authentication (or Lack of Foundation for a Document)**

This objection asserts that the questioner has failed to establish that a document shown to the deponent is genuine—that is, established on the record that it was written or produced by the person claimed to be the author. (See Federal Rule of Evidence 901.)

Objection: Hearsay

This objection asserts that your adversary has asked the deponent to testify about a statement made previously (outside of the deposition) in order to prove that the statement is true. (See Federal Rule of Evidence 801.)

Objection: Lack of Personal Knowledge (or Lack of Foundation or Calls for Speculation)

This objection asserts that your adversary has failed to establish that a lay (nonexpert) witness has personal knowledge of whatever it is the witness is asked to testify about. (See Federal Rule of Evidence 602, requiring that nonexpert testimony be based on personal knowledge.)