

FAMILY LAW DEPOSITIONS

Family Law Depositions 3.0: How to
Successfully Plan, Prepare and Use a
Deposition

INTRODUCING YOUR PRESENTERS

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PLANNING THE DEPOSITION

PLANNING THE DEPOSITION, PART 1

Goals and Timing

- Goals of the deposition
 - Discussion with your client
 - Discussion of alternatives to a deposition
- Timing of the deposition
 - Information and documents you have before notice
 - Meet and confer before serving the notice
 - Mutual benefits of a meet and confer process

PLANNING THE DEPOSITION, PART 2

Embracing today's technology...with care

- Deposition notice in a Post Covid-19 world
- The virtual platform
- Benefits and pitfalls of using technology
 - Nefarious conduct and how to protect against it
 - Videotaped depositions
- Where are you in relation to your client?

PLANNING THE DEPOSITION, PART 3

The production demand and inevitable continuance request

- The carefully drafted production demand
 - Meet and confer revisited
- Anticipating objections
 - Statutory deadlines
 - Meet and confer process
- Anticipating requests for continuance
 - Mutually beneficial conditions

PREPARING FOR THE DEPOSITION

PREPARING FOR THE DEPOSITION, PART 1

Q&A 3.0

- How to put your Q&A together
 - List of relevant issues
 - Relevant portions of file to review
 - List of anticipated, undisputed facts
 - List of anticipated, disputed facts
 - List of anticipated evidence in support of disputed facts

PREPARING FOR THE DEPOSITION, PART 2

You do not know what you do not know. Get an expert who knows

- Subject matter outside your wheelhouse? Get a consultant or expert
 - Controllable cash flow for support purposes
 - Business valuations
 - Stocks and options
 - Custody move away
 - Drug and alcohol cases
 - Domestic violence
 - Special needs cases

PREPARING FOR THE DEPOSITION, PART 3

Different types of questions and exhibits that support them

- Admission-focused questions
- Impeachment
- Fishing for information “reasonably calculated to lead to the discovery of admissible evidence”
- Leading versus exploratory questions
- Avoiding objections that have merit
- Choosing your exhibits

THE DEPOSITION DAY

THE DEPOSITION DAY, PART 1

The “SoCal Stip”, ditching the note pad and more

- Written in lieu of oral instructions
- What is a “SoCal Stip” and why you really should care
- Effective use of technology
 - Note pad? Really?
 - Use of instant visual display of testimony
 - Exhibits in an electronic format. Yes, it is cool
 - Exchanging impeachment exhibits for low and higher budgets

THE DEPOSITION DAY, PART 2

The obstructive opposing counsel I am sure you never had

- Deposition objections that have merit and those that do not
- The nonresponsive answer. Deal with it
 - Motion to strike at the deposition? But there is no judge!
- Use of discovery referee or your trial judge
 - Private versus public judges
- Suspending a deposition

THE DEPOSITION DAY, PART 3

5th Amendment, privilege, privacy and hitting the brakes on some breaks

- Invoking the Fifth Amendment against self-incrimination
 - The not so fun situations it comes up
 - Post deposition options after invocation
- Privilege and privacy
 - How to “work the problem” at the deposition
- Question pending. Deponent wants a break? No break for you!

USING THE DEPOSITION TRANSCRIPT AT HEARING OR TRIAL

USE THE TRANSCRIPT, PART 1

Practice tips from the bench (that means you better pay attention)

- Cutting down hearing time in a Covid-19 world
 - Know C.C.P. section 2025.620 and your options
- Transcript in lieu of testimony
- Other “exceptional circumstance” may exist
 - AKA I do not want to be mis-tried for exceeding two hours
- Proper use of the other party’s testimony in the deposition

USE THE TRANSCRIPT, PART 2

Practice tips from your colleagues (with judicial wisdom sprinkled on top)

- Impeachment and page line summaries
- Use of videotaped depositions
- Authenticate exhibits & obtain exemplars
- Visual demonstration of testimony and exhibits side by side
- Attack credibility
- A Kennemur Motion
- Bolster your closing argument
- Your “Notice of Intent to Read Portions of Deposition Transcript into Evidence”

USE THE TRANSCRIPT, PART 3

Practice tips from your colleagues, continued...

- To read or not to read
 - Thou shalt know the Doctrine of Completeness
- Objection! At trial to deposition questions and answers
- Did your notice state you intended to use the videotaped deposition at trial? No? Oops!
- Reading non-party witness testimony invokes different rules
- Motions in Limine to exclude testimony

USE THE TRANSCRIPT, PART 4

From the “Captain Obvious” list of often forgotten procedure, we bring you...

- Lodge the transcript
- Show up with the original or make sure someone else does
- Lay foundation
- Ask permission (and not just to be polite)
- Offer the transcript into evidence

**“BY FAILING TO
PREPARE, YOU ARE
PREPARING TO FAIL”**

**BENJAMIN FRANKLIN
(WHO NEVER TOOK A BREAK WHILE A
QUESTION WAS PENDING)**

Thank you for attending this webinar on family law
depositions



TABLE OF AUTHORITIES

Here is the law

- Code of Civil Procedure §2025.220
 - Content of Deposition Notice Requirements.
- Code of Civil Procedure §2025.270
 - Timing for Notice of Deposition.
- Code of Civil Procedure §2025.280
 - Document Request Inclusion.
- Code of Civil Procedure §2025.310
 - A deponent must appear in person at deposition; other parties can attend by telephone or other remote electronic means. But see Judicial Council Emergency Rule 11.



TABLE OF AUTHORITIES

Here is the law (continued)

- Code of Civil Procedure §2025.330
 - A party noticing a deposition may also record the testimony by audio or video technology.
- Code of Civil Procedure §2025.340
 - Procedure relating to audio or video depositions.
- Code of Civil Procedure §2025.410
 - Objections to Deposition Notice must be served three calendar days prior to deposition.
- Code of Civil Procedure §2025.460
 - Objections at the deposition.
- Code of Civil Procedure §2025.460
 - Suspension of Deposition to Move for a Protective Order.



TABLE OF AUTHORITIES

Here is the law (continued)

- Code of Civil Procedure §2025.550
 - Handling of certified deposition transcript.
- Code of Civil Procedure §2025.560
 - Handling of certified audio/video recording.
- Code of Civil Procedure §2025.620
 - Deposition Transcript use at hearing/trial.
- California Rules of Court, Rule 2.1040
 - Electronic recordings presented or offered into evidence.
- California Rules of Court, Rule 3.1010 (c)
 - Oral Depositions by Telephone, Videoconference, or other remote electronic means
- Judicial Council Emergency Rule 11.
 - Permits deposition by remote means.
- *Kennemur v. State of California* (1982) 133 Cal. App. 3d 907.
 - Objection due to discovery abuse for failure to testify regarding opinion at deposition or to update counsel on new opinion thereafter.