Trial Skills: Mastering the Art of Deposition Taking: Tips, Tactics, and Rules for Attorneys.

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About the Presenter

Jordan Marsh

Jordan Marsh has litigated hundreds of cases in his 25-plus years in practice, and has tried 69 jury trials in state and federal court, involving premises liability, automobile accidents, false arrest, malicious prosecution, suicide in custody, intentional infliction of emotional distress, police pursuits, police excessive force, police shootings, failure to provide medical assistance, illegal search and seizures, assault and battery, and wrongful death, with injuries ranging from soft tissue injuries to catastrophic injuries to fatalities.

Jordan has been named one of 40 Illinois Attorneys Under 40 to Watch by the Chicago Daily Law Bulletin. He has taught trial advocacy classes, served as a judge for trial advocacy student competitions, and coached a trial advocacy team, in addition to serving as a faculty member for the Kirkland Institute for Trial Advocacy.

Civil rights litigation: pursuing legal claims on behalf of citizens against government actors who have violated citizens' constitutional rights.

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Course Description

Course Presentation

Depositions are an important tool for the attorney to use. They are used regularly in Civil cases and rarely in Criminal cases.

This course will cover fundamental aspects of taking a deposition. This course provides an in-depth examination of the process and procedure of taking a deposition. The purposes for taking a deposition will be discussed in-depth. Uses for a deposition will be discussed. Deposition objections will be discussed and teach the attorney about these objections. Practical guidance will be given through thirteen tips for taking an effective deposition and will be discussed in-depth. The course will discuss some of the complexities of taking depositions and use of the deposition. The Learner will understand the duties, roles and responsibilities of counsel when taking a deposition and in situations involving taking depositions.

This course provides an intellectual foundation and introduces a set of learning skills essential for success in the legal profession and for life beyond. The course will provide opportunities for careful reading, for creative and critical thinking, for oral and written communication, and for engaging with others in a shared conversation about stimulating material.

Course Material

This material is intended to be a guide in general and is not legal advice. If you have any specific question regarding the state of the law in any particular jurisdiction, we recommend that you seek legal guidance relating to your particular fact situation.

The course materials will provide the attendee with the knowledge and tools necessary to identify the current legal trends with respect to these issues. The course materials are designed to provide the attendee with current law, impending issues and future trends that can be applied in practical situations.

Course Learning Objectives and Outcomes

This course is designed to provide the following learning objectives

The Attorney will learn to explain the critical importance of non-substantive skills, such as social intelligence, maintaining control over the deposition's tempo, and treating the witness with civility and respect.

The Attorney will learn to differentiate deposition types: distinguish between a discovery deposition and an evidence deposition and explain the unique purpose of a Rule 30(b)(6) or 206(a)(1) deposition of an organization.

The Attorney will learn to apply Noticing Procedures: Identify the correct legal procedure—using a Notice of Deposition for a party or a subpoena for a third-party witness—to compel attendance at a deposition.

The Attorney will learn to state core objectives: Explain the five fundamental purposes of taking a deposition: to obtain information, secure admissions, lock in testimony, authenticate documents, and assess the witness's demeanor for trial.

The Attorney will learn to execute preparation strategies: Outline a comprehensive plan for deposition preparation, including knowing the case thoroughly, drafting a flexible deposition outline, and organizing exhibits.

The Attorney will learn Master Questioning Techniques: Apply advanced questioning techniques, such as the funnel system (broad questions followed by narrow, specific ones) and rephrasing answers to get the witness to adopt a concise statement.

The Attorney will become knowledgeable about legal objections, improper objections, who can attend a deposition and the Signature Process of Depositions

Upon completion of the course, participants should be able to apply the course material; improve their ability to research, plan, synthesize a variety of sources from authentic materials, draw conclusions; and demonstrate an understanding of the theme and concepts of the course by applying them in their professional lives.

Timed Agenda:

Presenter Name: Jordan Marsh

CLE Course Title: Trial Skills: Mastering the Art of Deposition Taking: Tips, Tactics, and Rules for Attorneys.

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Course Material

I. The Basics:

A. What is a deposition

1. Part of the formal discovery process in a civil lawsuit
2. Rarely used in criminal cases
3. Sometimes I still don't understand why they let us take depositions
4. Notice of Deposition for parties
5. Subpoenas for non-parties

B. Types of depositions:

1. Evidence Depositions
2. Discovery Depositions
3. 30(b)(6) Depositions

C. Purposes of depositions:

1. Obtain information
2. Lock in deponent
3. Get admissions
4. Authenticate documents
5. Get a feel for opposing parties and witnesses
    a. How do they testify
    b. How will they answer questions

II. **The deposition is the backbone of the case for that witness, especially for parties**

A. Single most important part of the case.

B. Understand how depositions are used at trial.

C. The best way to understand what you need in a deposition is to try a case.

D. Always be thinking: "How will this work at trial?"

III. **Key point**

A. Bite-sized nuggets for impeachment

B. NYT Daily Podcast.

1. They always restate what their guest says in a way that can be understood.
2. Take your theory of the case and run it through the witness.
    a) You don't have to tell the witness, "This is my theory"
    b) Don't have to have witness input "What do you think of that?"

IV. **Tips For Taking a Good Deposition**

A. Tip #1 - Before the deposition, have a plan.

1. Theory of the case:
2. What facts do you need to prove, and which witnesses do you need to prove those facts?
3. Create a deposition outline
    a) Not too detailed
    b) Not a script
    c) Write out complicated Questions
4. Some questions need to be asked in a specific way in order to get what you want.
5. The more you do this the better you'll get at figuring out on the fly what you want to ask based on what the witness is saying
    a) But don't rely on that.
    b) Anticipate challenging answers.
    c) Example: but try not to make it too detailed.
6. You want the bad stuff as well as the good stuff.
    a) Great to elicit admissions and statements that help your case
    b) You also want to know their story and how they'll testify at trial, even though it may be unfavorable to your case.
7. Omitting Questions where the answer may hurt you does not protect you from being confronted with those answers at trial.

a) So ask the Questions and see how they'll answer them.

8. "How did this happen from your perspective?"

B. Tip #2 - Know your case.

1. Review all available documents, reports, written discovery responses
2. Review other relevant documentation.

C. Tip #3 - Figure out (ahead of time) what exhibits you will want to use and get them ready.

1. You may want to use certain records, reports, discovery responses, etc., and have the witness testify about them.
2. You may also want to use photos, video, and audio.
3. Google Maps diagrams and street images are great to use as exhibits.
4. For an in-person deposition, you probably want several copies of each exhibit.
5. Court reporters usually have exhibit stickers to mark the exhibits.
6. For a Zoom deposition, you probably want to learn how to screen-share.

D. Tip #4 - Make sure the witness is sworn. Make sure the witness swears the oath to tell the truth.

1. This may seem routine, but if everyone forgets, you will have wasted a lot of time and money.

E. Tip #5 - Make sure you ask whether the witness is being represented by one of the attorneys for the parties.

1. Any attorney in a deposition may object to a question
2. Only the witness' attorney can direct the witness not to answer a question based on a privilege.

F. Tip #6 - Use the "funnel" system.

1. Start with broad, open-ended questions to gather as much information as possible about a topic.
2. Then, break down the answer step by step, and confirm each fact in single statements.
3. This is called "locking the witness into her answer".
4. Examples:

   a) Q. Please describe all of your job duties as a foreman.

      A. Blah blah blah (goes through a long list of duties).

   b) Q. Let me break that down a little bit. One of your job duties as foreman is to supervise laborers.

      A. Yes.

c) Q. One of your job duties as foreman is to investigate complaints against company employees.

A. Yes.

d) Q. One of your job duties as foreman is to approve or deny vacation requests?

A. Yes.

5. Then, you lock him in on the list to make sure you got everything.

a) Q. So your job duties include supervising laborers, investigating complaints against company employees, and approving or denying vacation requests?

A. That's correct.

b) Q. Do you have any other job duties besides those I mentioned?

A. No.

6. Boom

a) Now you have the witness locked in and a nice Q and A at the end.

b) f he tries to add to his list of job duties at trial, you can impeach him with his deposition testimony.

G. Tip #7 - Do what we tell our kids to do: Listen.

1. If you're too focused on asking the next question in your outline, you may miss the amazing admission coming out of the witness's mouth.
2. I cannot tell you how many times I have been surprised by a completely unexpected answer by a deposition witness.
3. Be prepared to follow up on unexpected answers.

H. Tip #8 - Understand the difference between advocating for your position and being a jerk.

1. In other words, disagree without being disagreeable.
2. This applies to all aspects of litigation, but it is tested most often during depositions
   a) When everyone is engaged with each other– sometimes in the same room–in real time.
   b) Sometimes lawyers will feel like they have to put on a show for their client by being overzealous.
   c. This does not mean you lay down and let yourself be intimidated.
   d) Learn to stand up for yourself respectfully.
   e) Don't raise your voice.
3. Conflict will often appear when the lawyer defending the deposition begins making speaking objections.

   a) Instead of strictly legal objections – which we'll get to in a couple minutes – the lawyer will start to make speeches and coach his or her witness.

b) You see this a lot when the witness tries to evade a particularly damaging question, and issue non-responsive answers.

c) You have to ask the question again.

4. At some point, after this happens a couple times, the lawyer may object to "asked and answered" and then begin to restate the witness' answers.

a) This is improper, so you should point that out and make sure the lawyer knows you know the rules and will hold the lawyer to those rules.

b) Avoid getting into arguments where voices are raised.

c) If the other lawyer acts visibly frustrated and maybe even angry – one tactic is to try to distract you from your line of questioning.

d) Don't fall for it.

5. On the other hand, if the line of questioning is not that important, feel free to move on.

a) Remember, your job is to get information and admissions not to show that you're the better or tougher or louder lawyer.

b) Keep your eyes on the prize.

I. Tip #9 - Take breaks.

1. Think about taking a break once every hour or two

a) To clear your mind and stretch your legs

b) To look at your outline and your notes.

c) Remember, federal depositions can take up to seven hours.

d) It is especially important to take a break when you think you're finished, just to make sure you didn't miss anything.

J. Tip #10 - Control the tempo and pace of the deposition.

1. You should make sure you and the witness are not talking over each other
2. Make sure you are asking questions in a deliberate, slow-paced manner
3. Direct the witness to wait a beat after you complete your question before beginning the answer.
4. Likewise, make sure you allow the witness to finish answering the question before you begin your next question.
5. Be careful not to slip into "conversation mode."
   a) A deposition should be more like an interview than a conversation.
   b) At the same time, you do not want to be too formal or stiff.
   c) You want the witness to feel comfortable sharing information.
   d) The pace of the questions and answers should be even, deliberate, and unhurried.

K. Tip #11 - Except in very rare circumstances, do not interrupt the witness, even if the answer is long and not responsive to your question.

1. The solution to non-responsive answers

   a) Wait until the witness has completed the answer

   b) Then, for the record, move to strike the answer as nonresponsive.

2. If the witness is taking up the deposition time with repeated long, nonresponsive answers, and you run out of time,

   a) The solution is to file a motion afterwards

   b) Seek additional time to complete the deposition, unless the other party agrees.

L. Tip #12 - Always treat the witness with respect.

1. Be respectful toward all individuals involved in the case: the opposing party and attorneys, court reporters, clerks, and of course judges.

2. This is not only the right thing to do, but it will also be better for your case.

M. Tip #13 - Understand how objections work in depositions. See FRCP 30(c)(2).

1. There is no judge present in a deposition (with very few exceptions).

2. Attorneys and pro se litigants make objections "for the record."

   a) That means the objections are preserved in the transcript

b) The rare occasion when an objection is ruled upon by a judge, it will

not be until later, probably right before the trial.

N. While federal deposition testimony is technically trial testimony,

1. The fact that a question was asked at a deposition does not mean it is going to be allowed at trial.
2. Parties can file pretrial motions, known as motions *in limine,* seeking to prohibit the admission of certain facts and/or testimony.
3. Any deposition objections will be ruled on right before trial, if they are ruled on at all.

O. Even if there is an objection

1. The witness will answer the question
2. Unless the witness' attorney directs the witness not to answer the question
3. Which happens very rarely

What is impeachment?

To impeach a witness in court is to attack the witness' credibility (i.e. believability or truthfulness) by introducing evidence contradicting her testimony in court. That evidence may be testimony from another witness, a document, a video or audio recording, or from a previous statement by the same witness. Often, witnesses are impeached by their deposition testimony. This is why you want to be very careful about crafting your "lock-in" questions. You want to ask simple, clear questions, with one fact per question.

V. Deposition Objections (H3)

A. Only certain objections are allowed in depositions. These are known as "legal objections". The most common legal objections include the following:

1. Objection to form.
    a) That means the person objecting believes there is something defective about the way the question is phrased.
    b) Maybe it is confusing, or compound, meaning more than one question is being asked in a single question.
    c) Maybe it is a leading question. You can – but do not have to – explain the form objection so that the questioning lawyer has the opportunity to fix it.
    d) For example, you can say, "Object to form, leading", or "Object to form, vague", but do not go farther than that.

2. Objection to foundation, or “calls for speculation.”
    a) A foundation objection is the legal way of saying, “How would she know that?”
    b) It suggests the witness does not have sufficient personal knowledge to answer the question.
    c) Even though a federal deposition is **evidentiary,** meaning it may be read in court as trial testimony, you can still ask questions you would not ask in court.
3. The witness does not need to answer based only on personal knowledge.
    a) She can testify to what others told her
    b) Even if her testimony would not be admissible in court because it is based on hearsay.
4. The question assumes facts not in evidence.
    a) This objection suggests that the question is misleading or is based on a premise that has not been established.
    b) A classic example is the question, “When did you stop beating your mother?”
    c) This assumes you started beating your mother, which may not be (and is hopefully not) true.
5. Relevance. This is self-explanatory.

a) It suggests the question is not relevant to any matter in the lawsuit.

B. Improper Objections

1. Types of objections are improper and not allowed (and may result in sanctions if it gets that far).
2. Speaking objections.
    a. A speaking objection is an objection that suggests to the witness how the attorney or party would like them to answer.
    b. This is “coaching” the witness, which is improper.
    c. Objections must be concise (short) and state the legal basis, period.
    d. Any objections that go beyond concise legal objections are normally improper.
    e. However, there are times when a lawyer might make an objection for clarification and ask the questioning lawyer what he is getting at. If this is done in good faith, and not for an improper purpose, it is generally okay.
3. Directions not to answer the question based on anything other than privilege or otherwise prohibited testimony
    a) Such as testimony that may compromise national security

b) Testimony that may reveal trade secrets.

C. Who can object during a deposition? (H4)

1. Any attorney or unrepresented party can make objections to any deposition questions,
2. Only the witness' attorney may direct the witness not to answer a question.

D. Can a non-party witness have an attorney at the deposition? (H4)

1. A non-party witness is allowed, but not required, to be represented by an attorney at their deposition.
2. The witness's attorney can make objections and direct the witness not to answer, if legally appropriate, just as a party's attorney can for their clients.

E. Who can attend a deposition? (H4)

1. Any party is entitled to attend any deposition. In other words, any plaintiff or defendant can attend any deposition regardless of whether that plaintiff or defendant is represented by counsel.
2. Plaintiffs attend depositions on occasion. I sometimes find it helpful for my client to be present.
    a) For instance, if a treating doctor is testifying, the doctor may remember her patient's face even if she does not otherwise recall the treatment based only on the records.

3. Only parties and their attorneys may attend a deposition,
    a) Unless the parties all agree that someone else may be present during a deposition.

F. Signature (H4)

1. A witness can choose to **waive** or **reserve** her signature after the deposition.
    a) This means that a witness may reserve the right to review the deposition transcript once it is written
    b) They may choose to waive their right to review the transcript.
    c) A witness who reserves her signature cannot change the transcript but may fill out a form (known as an errata sheet) explaining what she thinks was incorrect.
    d) In my experience this is not a particularly important issue.
    e) I would say 50 percent of deponents waive, and 50 percent reserve. I have never seen it come up later in a case.

VI. **Summary Conclusion**

A. The best way to learn how to conduct a deposition is to try a case.

B. That's a great way to figure out what you would have liked to ask in the deposition,

C. You'd know what the witness was going to say ahead of time.

Program Transcript

The following is a computer-generated voice recognition transcript of the video presentation. This is an automatically generated transcript and not a verbatim transcript of the program. This is provided only for general reference and there may be portions that have not been accurately computer generated. If there are any inconsistencies, please refer to the video for clarification.

00:00:32:23 - 00:01:02:00
Hi, my name is Jordan Marsh. I am an attorney. I am the founder of the law office of Jordan Marsh. And we've been. I've been practicing, since 1994. And I've been litigating probably since that time. So more than 30 years. I've taken innumerable depositions. I, I spent about 20 years working for the city of Chicago, representing the city and its employees, including police officers, in personal injury and civil rights obligation.

00:01:02:03 - 00:01:09:15
And now, I represent plaintiffs in civil rights litigation and in personal injury litigation.

00:01:09:18 - 00:01:30:12
All right. So let's talk about what a deposition is. First I know that most of you probably know that. But just on the off chance that, you know, musicians, surgeons, sanitation workers happen to find this on the internet and have no idea what I'm talking about. A deposition is a part of the formal discovery process in a civil lawsuit.

00:01:30:14 - 00:02:13:09
Now, depositions can also occur in criminal cases, but it's much more unusual. Usually I think, primarily in capital cases, but for the most part, this is how we find out information in civil cases. And that's what I'll be talking about today. Civil depositions. Sometimes, I mean, since since the beginning of my career and even now, I'm, I've always been kind of surprised in, in the fact that, you know, you can take depositions that the opposing party you can bring into a room and ask them any question you want.

00:02:13:12 - 00:02:34:06
You can ask them all the secrets about their case. I just there's something about it where I thought it was just so interesting that you could do that. Obviously

that's how the courts work. There should not be any secrets. But I always thought that was really kind of cool. In any event, let's talk about how depositions are noticed up.

00:02:34:08 - 00:03:06:17
Before we get into the the actual depositions. There are generally two ways we kind of announce depositions to the parties. As a party taking a deposition, if you are taking the deposition of a party. In other words, the plaintiff or the defendant, and they are represented by counsel, you will send them a notice of deposition, which is simply a piece of paper, that tells them how the when the deposition is going to take place.

00:03:06:19 - 00:03:29:21
How it's going to be recorded. Is it going to be video recorded? Graphically recorded? Where it will take place, if it's going to be by zoom. Obviously you have an address location. And, just a basic kind of 411 about the deposition. The other way to do it, if it's a subpoena to a deposition.

00:03:29:24 - 00:03:52:19
So if you're taking a deposition of a third party who was not involved in the lawsuit, who is not a, a party to the lawsuit, it will be by subpoena, and you will have to serve that subpoena. Whereas with a party, you can just send the notice of deposition to that party's attorney. Or if it's a pro se party, then you send it to that pro state party.

00:03:52:20 - 00:04:17:11
But otherwise, if it's a subpoena deposition, you got to actually serve it pursuant to the rules of the state or federal court, or you're practicing. Now, there are some times when you are taking the deposition of someone from a government agency or a corporation. You may be able to contact someone and ask them if they accept subpoenas, by fax or by email.

00:04:17:13 - 00:04:38:29
Sometimes they'll do that, other times. Let's say you're taking the deposition of a witness who was on the side of your opposing party, but is not a party himself. It may be that rather than, you know, have a processor come to their door and have some stranger knock on their door and give them a piece of paper.

00:04:39:01 - 00:04:58:10
They would prefer to receive that, subpoena by email. Or maybe your opposing counsel could help you facilitate that. Because it makes it easier for everybody.

So there are different ways to do it, but generally it's by notice or by subpoena, depending on if the witness is a party to the case. So here are the types of depositions.

00:04:58:12 - 00:05:28:04
Generally, we take in the civil a civil lawsuit. We take discovery deposition. So that's the primary, type of deposition. People take, discovery deposition. And we'll talk about those primarily are for, discovery information. And, they're generally not for trial testimony, although under the federal rules in federal court, a deposition or even a discovery deposition is considered potentially trial testimony.

00:05:28:04 - 00:05:55:03
So, be careful about that. But it's not going to be the same thing as an evidence deposition. An evidence deposition is a deposition that is essentially a substitute for the witness testifying at trial. So generally, a discovery deposition is going to be taken by the opposing party to find out information and evidence. Deposition is going to be taken generally by the party.

00:05:55:03 - 00:06:24:24
The proponent of that witness's testimony, because it will essentially be trial testimony. So you can actually under certain circumstances and the rules are different. State and federal court, under certain circumstances, you can actually, avoid having a witness show up in court personally and instead have them take a deposition and essentially testify. Somewhere else. And that is recorded by video.

00:06:24:26 - 00:06:42:14
There will be a transcript. There may or may not be a video. If there's a video, you can play it in court according to the court rules, if court allows it. And if it's a transcript, you have to bring someone in to sit up on the witness stand and play the part of the witness.

00:06:42:17 - 00:07:11:25
And you just read the questions that you ask them in that evidence deposition. Now the jury is going to know. The court will instruct the jury that this is not the real witness, that the real witness was unable to be here. And you should treat this testimony the same way you would if the witness had personally appeared in court.

00:07:11:27 - 00:07:58:13
So in addition to evidence depositions and discovery depositions there's a third category or rather it's a subcategory of discovery depositions. Normally we are taking depositions of people, which is all you can really take depositions of. But there is a way to take a deposition of an organization. And you do that, of course, by taking a deposition of a person, but it's a designated person who is, it's a person who is specifically designated as the representative of that organization, whether it be a government body or a corporation or an agency, whatever it is, whether it's by subpoena or if, that agency, for instance, a municipality is a defendant, then you

00:07:58:13 - 00:08:26:22
send a 30 B6 notice under federal rules or a 206 A1 notice under Illinois Supreme Court rules. So it's called a 30 B6 deposition in federal court, or a 206 A1 deposition in state court. And essentially what you're doing is you are again, taking deposition of a person, but the testimony of that person is the testimony, the official testimony of that organization.

00:08:26:24 - 00:08:59:02
And that can be very important. And a really great purpose for 3606 A1 depositions, is you can actually dictate or at least, send out a notice with the topics you want them to testify about. So you'll send out a notice of deposition if it's for a party or a subpoena, if it's for a third party, and say, I want to take the deposition of the city of Chicago, regarding the following topics and you list topics.

00:08:59:04 - 00:09:37:11
Now, that's usually the subject of, negotiation and discussion between the parties to make sure that, it's not overly burdensome or anything like that. Maybe there are too many topics you try to narrow down. But in any event, that way you can have someone testify to something that no individual has personal knowledge of necessarily. So, for instance, a witness to testify about, the rules and regulations, governing the use of force by police officers in the city of Chicago.

00:09:37:13 - 00:10:00:11
That's not something necessarily that the officers are going to know about. Now, you'll you may ask the officers about it, but they're not going to be the official word on it. So you take the deposition of the city of Chicago, and they will find someone who is the person with generally the most knowledge about that topic. And then you can have that person testify on behalf of the city of Chicago.

00:10:00:11 - 00:10:24:16
And that testimony then is binding on the city of Chicago. So there are all sorts of things you can do with 36, depositions otherwise known against 261 depositions in state court. You can with all of this, you can be creative. You can really think these things through and really use these tactically, in a very effective way.

00:10:24:19 - 00:10:47:20
But let's talk a little bit about well, let's talk a lot about the depositions themselves. So what is the purpose of it? Why do you want to take a deposition? And let's just generally talk about, I guess we can talk about 36 and, regular discovery depositions the same way. So the purpose of a deposition, the first purpose of a deposition is to obtain information.

00:10:47:20 - 00:11:11:24
That's the broad purpose of a deposition. You want to know stuff from that witness? The second purpose of a deposition is to get admissions. Now, these are from whether it be witnesses for the other party or the other party, him or herself. You want to get admissions. So, for instance, of the report, for the police report, and I do a lot of police litigation.

00:11:11:24 - 00:11:39:27
So a lot of my examples will be related to, police reports or, you know, police officers and police litigation. So let's say, you know, in the report, you know, it says there's a use of force and it says something about the conduct of your client, the plaintiff, and it says, you know, the, you know, Mr. Johnson did not suggest any threat to the officer or whatever it is.

00:11:40:00 - 00:12:03:06
So then you will ask, you know, the officer, isn't it true that, you know, Mr. Johnson did not, present any threat to you or any other officer? And whether they say yes or no, then you can bring in. Isn't it true that in your report you indicated that there was no threat presented by Mr. Johnson? And so, presumably they say, yes, if that's what it says.

00:12:03:08 - 00:12:21:00
And now you've gotten you've got an admission. Now, the next thing and related to that is to lock in the deponent. We're going to talk about the ways to lock in the witness. But what you're doing is you're lacking them, not locking them in the room. We were taking the deposition. In fact, you'll allow them to take breaks.

00:12:21:01 - 00:12:53:01
However, you're going to lock in their testimony, and you're going to do it in such a way that it is that they can't wiggle out of it. And that is a big, important skill. And I'll talk a little bit about this more later on. But you do that really the best way to know how to do that is to try a case with no deposition or a bad deposition and you'll say, oh, I wish we had a better deposition because you can't impeach someone unless it's a nice, clean question and answer.

00:12:53:04 - 00:13:15:14
We'll talk about that. In any event, another purpose for taking a deposition is to authenticate documents so you can show this person a report. Assuming of course, the witness is qualified to authenticate the document. Isn't it true that this is a copy of the report you filed? On September 9th, 2023? Is it a true? Is this a true and accurate copy of such and such?

00:13:15:16 - 00:13:35:13
And then, of course, if you want to admit that document as a business record, you will ask the predicate questions for a business record under a federal rule of evidence 803 or the applicable state court rule. So is a is this a document that was made and kept in the ordinary course of business, at your organization?

00:13:35:16 - 00:14:06:18
Yes. Was it the job of the person making this document to, to make the document? Yes, stuff like that. So, you know, in that way you can actually establish, the evidentiary foundation for admitting that document evidence. So now you've got it straight. Boom. Done. The another, and I think a really important purpose for taking depositions, particularly of the other party, is to get them in a room and see what they look like.

00:14:06:18 - 00:14:27:22
First of all, because often, unless there's video, you don't even know what they look like, but mostly to get a feel for how they're going to testify. Is this a good witness or a bad witness? Is it someone who's going to testify effectively? This is someone who's going to squirm a lot. Often I will be very impressed by a witness initially who shows up and they start answering questions and they're friendly.

00:14:27:22 - 00:14:48:09
And I'm like, you know, the jury's going to love them, I hate this. But then the more you ask questions, the more that starts to slip. And, and this is in every case but many cases, the more questions you ask, the more you realize that you don't

really have a good answer for that question, or that the way they answer those questions, is not effective.

00:14:48:09 - 00:15:10:03
And you can, having tried cases, you can see how that's going to go. And so that's a really important purpose of depositions. If for nothing else, than to sit them in a room and get them talking about the case and see who they are. And not only do you want to ask them the tough questions that you want to admissions on, but you want to ask them the questions.

00:15:10:05 - 00:15:27:27
They're kind of bad for you because you want to see how they're going to answer those questions. How are they going to testify about that? You just never know. If someone is going to testify effectively, even if they have a good fact, they may or may not even realize it. They may not know how to, frame it very well.

00:15:27:29 - 00:15:57:19
And so you want to ask them the whole gamut of questions about your case. And want to talk about the importance of depositions. Now, the deposition is essentially the backbone of the case. Particularly for that witness. And if it's the deposition of the main plaintiff or the main defendant, that may be, the most important part of the case, because this is the Bible for that person's testimony, and that's what the jury is going to hear.

00:15:57:20 - 00:16:17:19
Now, it's not as if you're going to read that whole deposition to the jury. That person is going to be on the stand testifying about, about your case and about the, everything they testified to in the deposition. But you will be able to compare their testimony against that deposition. Transcript. And if they say anything different, you'll be able to impeach them.

00:16:17:19 - 00:16:44:10
We'll talk a little bit about that in a few minutes. So it is so important to prepare and have an idea. And we'll talk about this. I'll have a whole series of tips for you at the end. About, you know, how you want this deposition to go, what information you need, how you're going to ask questions, particularly the complicated questions that are going to, that you have to ask in a very specific way.

00:16:44:13 - 00:17:02:12
You want to you want to really write those down. You may even want to practice them. But you really it's I cannot overstate the importance of a deposition to your case. So you really want to nail it? You really want to prepare? And you really want to go in there and do as good a job as you can.

00:17:02:14 - 00:17:25:19
So let me I'm going to tell you a few things, just generally some random things, so to speak, about depositions that came to mind when I was preparing for this session. First, you want to after you get the information you want to do, give get bite nuggets of information that you can then use a trial. We'll talk more about that in a little bit.

00:17:25:21 - 00:17:53:29
There's something that there's a podcast, that called The Daily by the New York Times. I think a lot of people have heard it. One of the things that one of the hosts does, or maybe others as well. They do a really good job of kind of encapsulating what the, person they're interviewing said. So they'll ask them a question, and then usually it's a New York Times reporter, and that reporter will kind of give somewhat of a long answer.

00:17:54:01 - 00:18:18:16
And so what the host will then do is say, so what you're saying is boom, boom, boom, and then kind of digest that answer into a tidy, concise statement. And then the reporter will invariably say, exactly. So now you've got them in your words. You you actually kind of say what it is. So let's say someone testifies to you.

00:18:18:19 - 00:18:39:26
This long rambling answer and you say, okay, so essentially what you're saying is x, y and Z. And if you do it fairly inaccurately, then they should say yes. Now if they try to get evasive, which happens all the time, that's where your skill comes in, and that's where you keep pressing respectfully and politely to get the answer, to make them answer the question.

00:18:39:29 - 00:19:17:06
But you really want to. If you can get the answer in your words and get them to adopt that answer. And that's actually similar to, the strategy on cross-examination anyway, where you make a statement, and you make that witness say, yes, that's correct. And so it's essentially you testifying to the jury, you taking control of the narrative.

00:19:17:09 - 00:19:51:09
So now I'm going to give you a number of tips for taking a good deposition. I think there are 13 of these. First I'm going to just list them for you, and then I'm going to go, talk about each one individually and above all of these tips, probably more important than anything else. Probably the most important part of taking depositions, just like it's the most important part of trying cases and litigation in general, is knowing how to talk to people, knowing how to talk to people's social intelligence.

00:19:51:11 - 00:20:16:08
There's nothing more important in probably any walk of life, particularly where words are so important in the law. Whether you're talking to a judge, a juror, a witness, a clerk, opposing counsel, your own client, countless people, and knowing how to talk to each of these people. And there's so many different types of people you'll meet in your career, in the career of law.

00:20:16:10 - 00:20:37:22
The more people you meet, the more you realize, how complex it is. So you really, really, especially in a deposition, which is what you're doing for 2 or 3 or 4 or 5 or seven hours. You are talking to people and you're figuring out kind of how to get them to respond to you in a way that's effective for your case.

00:20:37:25 - 00:21:03:26
So over all of this is learn how to talk to people. And the more depositions you give, the more you'll learn how to talk to people. So, having said that, tip number one, have a plan. Tip number two, know your case. Tip number three. Figure out ahead of time what exhibits you'll use or you want to use, and get them ready.

00:21:03:29 - 00:21:23:10
Tip number four make sure the witness is sworn. Tip number five use the funnel system. Tip number six. Do what we tell our kids to do. Listen. Number seven understand the difference between advocating for your case and being a jerk.

00:21:23:12 - 00:21:32:13
Tip number nine. Control the tempo and pace of the deposition. Tip number ten. Except in very rare circumstances, do not interrupt a witness.

00:21:32:16 - 00:21:58:02
Even if the answer is long and not responsive to your question. Tip number 11. Always treat the witness with respect. Tip number 12. Understand how

objections work in depositions. So let's go through those individually because this is this is kind of getting to the the guts of how you take an effective deposition. So first have a plan.

00:21:58:04 - 00:22:24:29
And in order to have a plan, you need to take several steps back. What is your theory of this case? What is the evidence? Think about and figure out what evidence do I need to prove my case or to disprove the plaintiff's case? And where am I going to get this evidence? And how does this witness figure into my theory of the case?

00:22:25:06 - 00:23:06:22
What evidence do I need from this particular witness? And as part of that, you want to create a deposition outline. Now, you don't want it too detailed because you don't want to sit there reading from a script and not even looking at the witness. As you go through these questions, except if there are particular questions that have to be asked in a certain way because of the complexity of the subject matter, maybe it's a medical malpractice case, or it's a personal injury case about, a product liability case that has got some very technical aspects to it.

00:23:06:24 - 00:23:37:05
Or whatever it is. Any case can have questions that have to be asked in a very specific way. Now you really want to ask all of the questions. Excuse me. You really want to ask all of the questions in specific way? Obviously. In the most effective way, but some questions really need to be written down. So as you're going through the deposition outline and as you're thinking about the way, you're going to ask the questions and the questions you're going to ask in the order of questions.

00:23:37:07 - 00:23:58:21
Any question that occurs to you that you're going to really need to nail this one. Write that one down. Maybe put in bold whatever works for you. But it's definitely good to have that, because so many times I have thought, oh, I can just wing this because I've done this for a million years, and then I get in there and I'm like, shoot, how do I say this?

00:23:58:23 - 00:24:23:23
And it takes me several times to figure it out. You don't want to be doing that. You want to get it right the first time if you can. So do the preparation. Write out the tough questions. Otherwise, the outline should just essentially be things that spark your mind because you've already thought through these questions. And

so you'll have a couple a couple of words, maybe a phrase, and you will know what questions to ask because you've thought about it.

00:24:23:25 - 00:24:27:00
And you've gone through that process ahead of time.

00:24:27:02 - 00:24:43:25
Now I have it here. I know I've said it before, but I want to say it again. You want the bad stuff as well as the good stuff. So when you're, writing down the questions to ask and figuring out what questions to ask, even if it's a question that's not good for your case, they're going to testify about it at trial anyway.

00:24:43:27 - 00:24:57:09
You want to know how they're going to testify about it. So ask them even about the bad stuff for your case. You want to know the good stuff, the bad stuff, everything they're going to say and how they're going to say it.

00:24:57:11 - 00:25:18:01
Okay. Tip number two, know your case. This is kind of part and parcel of, having a plan. You can't have a good plan unless you know your case. You want to have reviewed all the documents, seen all the video, taken into account. Everything. Not just what? The witness. Not just records relating to that particular witness, but records relating to other witnesses.

00:25:18:03 - 00:25:42:14
Video relating to occurrences that the witness may not have seen. If that's something that could possibly be relevant, you need to know your case inside and out, particularly if the witness says something you don't expect about some other aspect of the case. You didn't know, for instance, that witnesses. Oh yeah, I know, I know, Johnny, I've known Johnny for years, and you didn't know that there was just nothing in the discovery that indicated that.

00:25:42:16 - 00:26:00:26
Now you got to. You better know what Johnny said in his deposition, or what Johnny said on video or whatever it is. So know that case. The more you know your case, the more prepared you are, the better your deposition will be, the more effective it will be. And by virtue of that, the better your case will be.

00:26:00:29 - 00:26:20:24
Number three, figure out ahead of time what exhibits you will use. This is important for a couple of reasons. One, obviously you know you want your

exhibits ready. And you want to be you don't want to be sitting in your deposition worried about, where do I find those answers to interrogators? What exhibit would be good to ask this question?

00:26:20:25 - 00:26:37:07
You don't want to be asking those questions of yourself in the deposition. That's why you want to think about it all ahead of time. And as you're going through that deposition outline, you're thinking, oh, well, this is where I'll ask him about his answers to interrogatories. And so let me pull that up. Let me make sure it's in the right folder.

00:26:37:08 - 00:26:57:14
Let me make copies of it. So I have it. And you want to have it organized system. So when you're in the deposition you can just pull it right up. One thing I found is that white pieces of paper are white pieces of paper. And when you've got, a stack of 20 documents, they're all white pieces of paper.

00:26:57:16 - 00:27:23:08
And, you know, three of each. At some point, they just blend into each other, and you really have to have a good system for, like, like put them on. Put them each in their own folder with a name on it that says answers to interrogatories, answer a complaint, whatever it is, have it so that it is available to you with the least thought possible, because you do not want to have to go down that rabbit hole.

00:27:23:10 - 00:27:44:13
Second reason that exhibits are so effective that getting your exhibits ready ahead of time is so effective is because it helps to spark more questions. So you pull up the answers, interrogatories. You figure out which answers you're going to ask the witness about. And once you do that and you look at those answers that will spark more questions, maybe a whole other set of questions.

00:27:44:15 - 00:28:07:18
So that's this kind of, codependent back and forth between the outline and the exhibits. You go back and forth. The outline gets you to the exhibits. The exhibits help feed the outline. And it goes like that. So, and then also, by the way, you might think as you're going through that outline, I need a map. I need, a picture of the intersection.

00:28:07:18 - 00:28:24:22
I don't have a picture of the intersection. So you're going to go to Google Maps and you're going to make sure you get it from the right angle, and you're going to

pay it off and you're going to make copies, all of that stuff. You do not want to have to think about in that deposition. You want that done and ready from the get go.

00:28:24:25 - 00:28:46:11
Make sure the witness is sworn. It's kind of silly, kind of. But if you don't do it, you're screwed, right? Because you cannot use that deposition. Now, I, I don't know, maybe once or twice in my career that's happened. So it's very rare, but just something that always keep in the back of your mind. Just make sure that witness has done that.

00:28:46:14 - 00:29:08:03
Sometimes we go through things we don't even realize because you've done it. So many times. You don't want to make that mistake. Make sure you ask whether the witness is being represented by one of the attorneys for the parties. Any attorney in a deposition may object to a question, but only the witnesses attorney can direct the witness not to answer a question based on privilege.

00:29:08:06 - 00:29:29:22
That's pretty rare. And we'll talk more about directing witnesses. Not to answer, but, if it's a third party witness, you want to make sure if that if that third party witness was brought by an attorney, they may have just brought them here. You really want to ask who are you represented by, if there's any question at all?

00:29:29:25 - 00:29:52:03
Because there are certain things that certain attorneys can do only if they represent that witness. Use the funnel system. Start with broad, open ended questions. Remember. Remember the the point of a deposition. The main point is to obtain information. So first you just want the whole kitchen sink. Just tell me everything. You know, ask a broad question. Tell me everything.

00:29:52:05 - 00:30:17:23
Now, once you get everything, you've taken notes, right? You've you've got a, b, c, d and E, then you break it down each one and you start asking narrower and narrower and narrower questions. Because first the first part is getting the information. So you know the information that doesn't really help you at trial. The second thing is getting that information into bite sized chunks.

00:30:18:00 - 00:30:47:06
Clean questions and answers that you can use to impeach the witness at trial. So, the other thing this involves is lacking lacking in the witnesses, which is what we

talked about before. Lacking in the witness to statements that you want. So here's an example question. Please describe all of your duties as a foreman. Answer. Well, I get in, I sign in, I've got to supervise people.

00:30:47:06 - 00:31:06:01
I've got to watch the grounds. I've got to do maintenance. I got to check the video. Blah, blah blah. They give you a whole long list of things. So then you say, okay, let me break that down a little bit. One of your job duties as a foreman is a supervise laborers. Yes. One of your job duties as a foreman is to investigate complaints against employees.

00:31:06:07 - 00:31:31:01
Yes. One of your job and your job duties as a foreman is to approve or deny vacation requests. Yes. Then you lock him in on the list to make sure you get everything. Now you've got those individually, but you haven't locked him in yet. Here's the lock. Question. So your job duties include supervising laborers, investigating complaints against company employees, and approving or denying vacation requests.

00:31:31:03 - 00:31:53:15
That's correct. Do you have any other job duties besides those I mentioned? No. Boom! Now you've locked him out. Now, the fact of the matter is, practically. They may say that's. They probably will say that's all I can think of now. Sometimes that's as good as it's going to get. So then you'll say, okay, if you think of anything else throughout this deposition, interrupt me and and just let me know.

00:31:53:15 - 00:32:17:06
And we will explore it. So you've got them as locked in as possible. So it's not just simply a list of things, but it is confirming that that list is an exclusive list and there's nothing else. So then when something comes up that was outside of their, of their duties, you have a nice question and answer where you list all the things they said in the deposition.

00:32:17:09 - 00:32:39:20
Lock them in. And that wasn't one of them. So you really want to lock people and it's really important. And the best way to do that, as I mentioned before, is try cases. The more you try cases, the more you will understand how important it is to ask deposition questions in a specific way. There's nothing worse than knowing that X fact exists.

00:32:39:28 - 00:33:01:15
This guy testifies at trial and, differently. And you can't get him. You don't have the question and answer. You've got some long, rambling question, or you've got one question and a long, rambling answer that kind of has it, but has a bunch of other things that you don't want in, and you haven't locked him in. There's no worse feeling than that.

00:33:01:22 - 00:33:27:28
So Lockman. Do what we tell our kids to do and listen. So one of the temptations in a deposition, especially when you have your outline, is to just kind of like be looking at your outline, asking questions. Is there an answer? Yes. Move to the next question. Move to the next question. But if you don't listen to that answer, you're going to lose a lot because there are plenty of answers that they will give that you did not expect.

00:33:28:01 - 00:33:50:21
Or there's a slightly different nuance. And now you have to kind of go down that rabbit hole a little bit, and you have to derivate from your transcript. Always be ready to do that in the event that the witness brings up something you didn't know, or answers a question in a way that surprises you, and might help you, might hurt you or whatever, but explore it.

00:33:50:23 - 00:34:04:10
So you have to listen to those answers. Don't just sit there asking questions. Hearing the answer and moving on. Always listen. And you always have to be thinking about how that answer affects your case.

00:34:04:12 - 00:34:28:02
Understand the difference between advocating for your position and being a jerk. This is common sense, but it's common sense that I think, a lot of attorneys don't have. So, you know, disagree without being disagreeable. This applies to all aspects of litigation that it is tested. It is tested most during depositions when you're face to face and all of a sudden everything comes up.

00:34:28:02 - 00:34:51:07
And sometimes attorneys like to show off for their clients. So they'll be a little bit more, abrasive or, you know, whatever it is. And they'll be maybe a little bit more adversarial, because they want their client to see that they're fighting for them. So you don't want to take the bait. Okay. So you want to be able to de-escalate things.

00:34:51:09 - 00:35:23:19
Remember, your job is not to be better or cooler or more right than the other attorney. Your job is to get the information you want and then move on. So do your best to de-escalate if you have to, while not backing down on certain principles and then moving along. But do not think about this. Everything you say in that deposition, assume that a judge is going to see it and think, do I want the judge reading this in a transcript?

00:35:23:21 - 00:35:39:02
That should be your North Star.

00:35:39:05 - 00:36:01:19
I know we're moving from kind of big picture, concepts like don't be a jerk to very logistical, technical concepts like take breaks. But all of it is really important. So think about taking breaks. Maybe once every hour just so you can kind of get your thoughts together. And it's also good for the witness.

00:36:01:19 - 00:36:21:26
So they can stretch their legs. They can kind of if it's been, you know, intense questioning always be willing to take a break. What we always say to the witness, is, you know, feel free to take a break at any time. We just ask that you answer the question that's pending, so you can't take a break in the middle of a question or between a question and the answer.

00:36:21:29 - 00:36:42:09
Answer the question, and then we can take a break. We're not trying to torture you here. This isn't a stamina test. We're just trying to get information. And so you should be as comfortable as possible. And as the questioner, you should want to make sure that you know you're in a good state of mind. And you've had a chance to kind of review things and see what you missed or whatever.

00:36:42:09 - 00:37:07:07
So feel free to take breaks. Maybe once every hour, every hour and a half, whatever it is. Along those lines control the tempo and the pace of a deposition. I'm not sure if you can tell, but I can be a fast talker unless I slow myself down. So I need to be very conscious of the way I ask questions and the pace at which I ask questions.

00:37:07:10 - 00:37:25:04
One thing you don't want to do if you want to get invited to court reporter holiday parties. Do not get into quick back and forth with a witness. Because it drives

them crazy. And the reason it drives court reporters crazy is because it's really difficult to make a clean transcript when you do that. So you want to make sure.

00:37:25:04 - 00:37:46:14
And one of the things I say in the beginning of a deposition is, wait until you are sure that I've completed my question before you begin your answer. In fact, what I often say is, once you once you're confident that I've completed my question, wait a beat before you answer. Don't even answer right away. Wait and then answer.

00:37:46:17 - 00:38:08:16
That allows you to think about the question. Make sure, the attorney, your attorney has a chance to object. And also, it kind of avoids that quick back and forth that drives court reporters crazy. So you want to control the pace of the deposition? And you don't want to get into a quick back and forth. This is important not just for you, but for the witness.

00:38:08:18 - 00:38:40:19
And for the witnesses. Attorney. Except in very rare circumstances, do not interrupt a witness's answer. Even if the answer is not responsive to the question. This is, you know, maybe not everyone is going to have the same position on this. In my career, I have done that. Where, either a, an attorney has started coaching a witness, and we'll get into that, or the witness is testifying.

00:38:40:21 - 00:39:02:18
About something, you know, just testifying what they want to testify to. But it's not really responsive to your question. It's the answer they want to give, but it's not really the answer to the question. So it might be tempting to interrupt. This is not always. I'm not saying never interrupt. Sometimes I've interrupted where it's clearly the witness.

00:39:02:18 - 00:39:31:06
Doesn't really understand the question. And it's clear that, they're not trying to, be evasive or anything, but they're just not understanding. Or they may misheard the question. Misinterpreted the question or whatever it is. So sometimes I'll gently say, you know, I don't mean to interrupt, but, I think maybe I asked that question or whatever, whatever it is sometimes, and again, this is all about like, again, learning how to talk to people, learning how to read social cues.

00:39:31:08 - 00:40:05:15
So if you know, you can interrupt in the right circumstance, but if someone is giving a deliberately, non-responsive answer, generally I would say let them make their answer and then you will say, I appreciate that, but that's not really my question. And then ask the question again. Once you start interrupting a witness, it's very easy to get into that back and forth, especially with the other attorney who's going to jump in and say, don't interrupt the answer, whatever it is.

00:40:05:18 - 00:40:24:19
Generally, this is not necessarily trial testimony. So you can let the witness say what they want to say, but then you can ask the question again. Now, there have been times, particularly with expert witnesses, where let's say it's a state court deposition, state court, you only have three hours generally in Illinois federal court, generally you have seven hours.

00:40:24:19 - 00:40:50:24
So it's not that as, as as urgent. But let's say you have limited time and there's a hard stop for the deposition. And this witness keeps going on and on and on. Clearly kind of, just giving you long answers, to make it impossible for you to get what you need. Because expert witnesses are generally experts at being witnesses.

00:40:50:26 - 00:41:16:00
Sometimes you may want to try interrupting, and say, look, I understand. I don't mean to interrupt, but we have limited time. Generally speaking, though, if you can let them finish the answer. And then with respect, I'm sorry, but I. I think maybe you misunderstood my question. Try to answer my question. Stuff like that. And I think the same thing you do a trial on cross-examination.

00:41:16:02 - 00:41:39:11
One of the things that can be very effective in front of a jury is to allow a witness to give a clearly non-responsive answer, and then you say, thank you. I appreciate that, but try to answer my question, which is X, Y or Z or whatever works for you. But there are ways to do it.

00:41:39:14 - 00:42:08:22
Sometimes, by the way, I will I will strike the answer. I'll move to strike. The answer is non-responsive. I only do that in federal cases because, again, federal court technically a discovery deposition is evidentiary. So it can technically be used in certain circumstances as trial testimony. So what I will do sometimes, if

the witness gives a non-responsive answer, I'll say respectfully, I'm going to move to strike that, strike that answer.

00:42:08:22 - 00:42:44:12
And, I'm going to ask you to answer my question, whatever it is. But again, respectfully and sincerely and not raising your voice. And speaking of not raising your voice. Always treat the witness with respect. The witness is whether you like them or don't like them, or whether you're aligned or not aligned. The witness is generally not a lawyer and is only here because, either you have subpoenaed that witness, or because they filed a lawsuit or you filed, you know, or they were, sued.

00:42:44:15 - 00:43:11:00
But this isn't their job. So you're bringing them into your job, and this is not their world. And people generally are nervous. They don't like depositions, non-lawyers. So remember all that and always treat the witness with respect, even if you don't agree. And that's one of the things about litigation. I think that's so interesting is litigation is adversarial by its nature.

00:43:11:02 - 00:43:35:23
But it's but it doesn't mean litigation is kind of where you can learn to agree to disagree without being disagreeable, to really interesting skill that hopefully then, you know, you can use in other areas of your life. We can all use in other areas of our lives. So, you know, remember that that witness is pretty much compelled to be there and they're going into your world.

00:43:35:26 - 00:43:57:03
And you should treat them with respect whether you like them or not, whether you think they're telling the truth or not. And whether you think they're aligned with your side of the case. Always treat people with respect. That's obviously a general rule, anyway. A good rule to live by. But specifically, when it comes to witnesses, make sure you treat them with respect.

00:43:57:05 - 00:44:31:19
Understand how objections work in depositions. So there are objections that you make a trial, and there are objections you make in depositions. And those are those can be very different. So trial there can be any number of trial objections. But there are relatively few proper objections. In a deposition and deposition and deposition objections particularly have to be specific legal objections as opposed to speaking objections.

00:44:31:26 - 00:44:54:18
So let's get into that. In a deposition, there are no there are no judges. Generally speaking, once in a while, if it's been very difficult, the judge will supervise a deposition. But that's very rare. Generally, you're taking depositions in a conference room or over zoom. And it's the attorneys and a court reporter and the witness. So no judge is going to be ruling on objections.

00:44:54:20 - 00:45:02:02
So you're going to be making objections for the record.

00:45:02:04 - 00:45:23:29
And when I say you're making objections for the record, that means you're just preserving the objection in the event that the issue comes up later in court. The vast majority of objections you make, they're just they don't show up at court at all. They're not even, they're not even involved at all. You're just making them because attorneys always want to preserve their objections.

00:45:23:29 - 00:45:56:10
They always want to preserve their positions, which is important. But remember that these objections are not going to be ruled on at the time, and they probably won't even be ruled on. The vast majority won't even be ruled on a trial. It's just not going to come up. But when it does come up, you want to make sure you made the right objection.

00:45:56:13 - 00:46:13:07
I'm going to go over specific deposition objections as opposed to trial objections. Remember, there are only a few objections you can truly make. And this is when you're defending, generally when you're defending a deposition. Now you may also make an objection.

00:46:13:09 - 00:46:35:23
As the attorney who's asking the questions, that's more rare, but it happens. So, for instance, if, you know, if the witness is going on and on or if the other side is, the other attorney is making speaking objections or whatever. You can lodge an objection. Listen, I just want a line objection about your speaking objections, or I'm just going to object and move to strike the answer non-responsive or whatever.

00:46:36:00 - 00:46:53:11
But generally speaking, most of the objections are going to come from the attorney who is not asking the questions, and they only get a certain kind of

objection doesn't mean they're going to stick to that. But according to the rules, the only have certain types of objections you can make in depositions.

00:46:53:14 - 00:47:15:24
The first objection is objection to form. And essentially you're objecting to the form of the question. Let's say the question is compound in a compound question. Essentially, you're asking multiple questions. Isn't it true that on January 7th, you went to the bathroom and to Arby's and then you got a hot dog, and then you sat down, and you watched family act?

00:47:15:26 - 00:47:37:07
That's like four questions. So you have to break that up. So that's an objection to form compound. And so sometimes the attorney will say objection to form compound. Objection to form leading objection to form whatever it is. So that's a form objection. But again, you've got to make the legal objection. And you can state the basis for it.

00:47:37:09 - 00:48:02:13
And then either say you can answer or just stop talking. But when the defending attorney does more than that, they're starting to get into speaking. Objection. So we're going to get to that in a minute. If someone object to foundation or cause for speculation, it means that their position is that the witness isn't really qualified to answer the question.

00:48:02:15 - 00:48:30:22
So often, attorneys will object, saying calls for a legal conclusion. That's essentially a foundational objection. So if you're deposing a non-lawyer, or a non-police officer or someone who whose job is not to know the law and you say, well, you know, aren't you required to have a seatbelt on if you're driving in Colorado? The other side can object and, say, calls for a legal conclusion.

00:48:30:25 - 00:48:59:15
No one's going to rule on that objection, and it's probably never going to come up. That deposition issue is now probably never going to come up, but it's important if, if the if the if the attorney feels that the question is improper for the attorney to make that objection. And maybe that attorney is going to, maybe that's a big part of the case, and the attorney is definitely going to make that objection, maybe even file a pretrial motion to bar that testimony.

00:48:59:17 - 00:49:26:11
It's important to attorneys to be consistent and always to preserve those objections. So an objection to foundation or calls for speculation essentially says that the witness does not have, the qualifications to answer the question. There is not enough, foundation for the witness to answer that question. Foundational objection is a legal way of saying, how would she know that?

00:49:26:14 - 00:49:47:03
Another example of a foundational objection, to a question would be if you ask a witness, well, what was Bob doing across town while this was happening? Well, the witness doesn't necessarily know what Bob was doing across town. The witness is here. Bob is across town. So that would be a foundational objection. And it's very similar to calls for speculation.

00:49:47:06 - 00:50:06:25
You're saying the witness would be speculating as to what Bob was doing, or you might say, well, what was Bob's state of mind at this time? And, you know, that witness doesn't necessarily know Bob's state of mind. So you would object or the other side would object. Again, on foundational grounds. So objective foundation object calls for speculation.

00:50:06:27 - 00:50:15:18
Either of those would suffice.

00:50:15:21 - 00:50:40:22
There's another objection. Assumes facts not in evidence. Assumes facts not in evidence. Pretty self-explanatory, but essentially saying, look, the classic question for assumes facts, not in evidence is when did you stop beating your mother? Right. There's no evidence that you ever started beating your mother. And hopefully you never started beating your mother. No one should beat their mothers.

00:50:40:24 - 00:50:54:28
So that's a, That's an objection to the premise of the question, and that's really it. That's an obvious one. But there are plenty of questions that you can ask

00:50:55:00 - 00:51:18:26
What will sometimes happen is a lawyer will kind of preface a question with a statement. So you're jumping on my client and you're punching me in the gut. So tell me, what color was this guy? And so, you know, if he if the witness is smart,

the witness is going to say, whoa, whoa, whoa, whoa. I was not jumping on anyone.

00:51:18:28 - 00:51:49:20
But more importantly, it's the lawyer who's going to say objection. Assumes facts, not in evidence. That assumes my client was jumping on your client or whatever it was. So that will happen. Actually, a lot. Where you'll see a, you know, an attorney kind of paraphrase or presume, to paraphrase the situation and then ask a question and, you know, occasionally the last the only thing the witness will hear is a question.

00:51:49:22 - 00:52:10:05
And so in the transcript, the entire question will include that first opening statement and then the question. And then the witness will say, this guy was blue or whatever it is. And that's where the other attorneys got to step in and say, well, I objected. Assumes facts, not evidence. So that's another objection. None of these objections are going to be ruled on.

00:52:10:05 - 00:52:33:07
I know I've said this before, but it's important. These are just objections for the record. And generally speaking, the witness is going to answer the question. Obviously, if a question is confusing, then and, you know, the attorney says objection to the form of the question, confusing, vague, compound, whatever. Often the attorney will ask the witnesses. Do you understand the question?

00:52:33:10 - 00:52:51:23
If he says, no, I don't at that point. Now you're going to have to ask a different question. So sometimes it actually has a real effect in the deposition. But again, there's no one ruling on it at the time. And most objections are going to be stated for the record. And then the witness will answer the question anyway.

00:52:51:25 - 00:53:16:03
Now the only time, generally the only time, a witness can be directed not to answer the question is by their own attorney. And if the question goes to attorney client privilege, what did you tell your attorney in preparing for this deposition? What did your attorney tell you? That's very rare because people know that attorney client privilege. Is is a pretty sacred privilege.

00:53:16:03 - 00:53:46:03
And, you know, most attorneys will say, look, other than what you told your attorney, what have you said about this case? And they'll do a good job of that.

So it doesn't come up a lot. But in extreme examples, it certainly could. It's not that it's never come up. The another example, of directing your client not to answer the question is if the attorney asks the same exact question again and again and again, trying to get a different answer.

00:53:46:05 - 00:54:08:02
Now, often the other questioning attorney, their position will be this guy's not answering the question. Sure, I've asked it a lot. And that's where you get an objection asked and answered. And usually the other attorney, the defending attorney, will allow you to ask that question a few times, and then they'll step in and say, you know, this is getting a little ridiculous.

00:54:08:02 - 00:54:33:05
You've asked that question five times now. And then there's often a debate over whether the witnesses accurately answered or answered responsively. So then you go back and forth. But the bottom line is, generally speaking, the the only reason for telling your client not to answer the question is, privilege. Now, other things could be national security.

00:54:33:08 - 00:54:58:05
If there's something that was, you know, that's clearly not for public consumption or not even for consumption by the attorney, you know, and that's rare, but it could possibly happen. One last thing that I can think of, where I have sometimes directed my, client not to answer the question is, is if it's harassing. So let's say the case is about a car accident.

00:54:58:08 - 00:55:21:22
You know, there's a pretty wide scope of what you can ask and discovery and what you can ask in a deposition in terms of relevance. But if you ask something that has absolutely nothing to do with anything that's going to be admissible, a trial. Then the other attorney has a right to object as harassing and direct the client not to answer the question.

00:55:21:24 - 00:55:40:17
Now, at the end of the day, the test for whether you are going to direct your client not to answer the question is whether you would feel comfortable in front of a judge defending that decision. And if the judge you judges are generally pragmatic people. So, you know, judges will say, well, why did you need that information?

00:55:40:20 - 00:55:45:25
And if there's no basis for the information, then you're going to be fine directing your client not to answer the question.

00:55:45:28 - 00:55:51:27
Very few depositions feature any significant amount of attorneys directing their client not to answer the question.

00:55:51:29 - 00:56:15:10
But it does happen, and you should be prepared if it does happen. And if you did ask a question that is genuinely objectionable, there is no harm in saying, you know. Point well-taken. Let me ask another question. Strike that. Let me ask another question. Good point counsel. Let me ask another question. Nothing wrong with that. It's all about kind of being the grown up in the room.

00:56:15:13 - 00:56:43:04
So let's talk about speaking of Jackson's, speaking objections are, objections where it's more than just a legal objection. It's an objection. And then it's kind of a statement by the attorney. Kind of explaining why they've objected or inserting facts into, into the deposition from the attorney. And I'm going to give you, a recent deposition.

00:56:43:04 - 00:57:06:08
I took a transcript, an excerpt of a recent deposition, to give you an example of what I'm talking about. So I am taking the deposition of a police officer regarding how long he was searching a suspect. Okay. Question. So I'm just asking you to see if you can give us a more specific estimate. Then under ten minutes.

00:57:06:08 - 00:57:18:20
You were searching him. Answer under ten minutes. That's the best I could do. Question. So it could have been 10s. It could have been 9.5 minutes.

00:57:18:22 - 00:57:43:11
Defense attorney. I'm going to object. It calls for speculation. It's on video. If you want to know how long it is. You can watch the video. Question. You can answer the question. Witnesses answer. It's on video. So that's a perfect example of why you're not allowed to make speaking objections and coach the witness, because the witness will literally parrot what you say.

00:57:43:17 - 00:58:09:26
And now essentially, you're the attorney is testifying. The witness isn't. You cannot have that. And I'm not saying like that happens once you're going to go into court. You have to be really careful about going into court. We'll talk about that. To complain about someone's deposition behavior. But that is absolutely not allowed. And that's something that actually some attorneys can't help themselves from doing.

00:58:09:29 - 00:58:30:11
Other attorneys. Most attorneys are pretty good about it. They'll just object, you know, whatever the objection is. And you can answer the question because they know it doesn't. It doesn't really matter. They have a right to ask the question, and they have a right to demand an answer, even if you object to the question. And if you object to it, you can later move to borrow it anyway from a judge.

00:58:30:11 - 00:58:56:27
Have a judge look at it. But to essentially testify for your client obviously is improper. So, that's essentially what is speaking. Objection is it'll be, you know, even when you say objection, how is he supposed to know that? That's that's essentially just arguing and it's not appropriate. Objection. Foundation. Objection. Calls for speculation. That's why they have specific words for objections.

00:58:56:27 - 00:59:19:25
Words matter in the law, that you're allowed to. Otherwise the attorney just starts kind of becoming part of, you know, the dialog. And you do not want that. And that is not okay. And that's not appropriate. And it's not good for your deposition. So, again, respectfully, without raising your voice, you need to be able to stand up for yourself and say, counsel, you know, that's not appropriate.

00:59:19:26 - 00:59:38:00
Please stop. And at some point, you know, if it gets really bad, then you can make a call to a judge. Or you can then go in on a motion. But remember things that are really, really important in the moment. And you're like, oh, I'm going to go into the judge. I'm getting this transcript. I'm going to file a motion.

00:59:38:01 - 01:00:04:08
I'm going to go for sanctions. I'm going to do it all. And then the next day you're like, I got the information I need. I don't really I need to go in. You know, cooler heads prevail. So always keep always keep perspective. But also make a record if the attorney is making speaking objections. What you cannot tolerate is a

situation like this where now the witness is parroting the attorney, and you're not really getting answers from the witness.

01:00:04:09 - 01:00:27:25
If that becomes a problem, then you might want to go in to court and file a motion, to depose a witness, file a motion for sanctions, whatever it is. Only if it's egregious enough. Because one thing that judges hate is supervising discovery disputes and presiding over discovery disputes, particularly deposition disputes, because the judges will often say, look, a pox on both your houses.

01:00:27:26 - 01:00:54:06
I don't care if it's whose fault or your fault. It's like with your kids, you're like, just figure it out. You're old enough to figure it out. You're experienced attorneys. I don't want to deal with this. So, you know, you really got to have a strong case if you're going to take it to a judgment.

01:00:54:09 - 01:01:22:05
have a lot of experience with depositions. Very, very helpful to get them in to watch those depositions. But again, you might want to call ahead of time to make sure it's okay with everybody. Now here's the question about is a question about signature. This is, we're really getting into the, the details here, but, at the end of a deposition, a party has a right to reserve signature or waive signature.

01:01:22:07 - 01:01:45:19
And what that means is that, a party has a right to to review the transcript of that deposition. Once a transcript is printed and review the transcript and then determine. Is that accurate or is that not accurate? Is there anything about that transcript that is not accurate? And when I say accurate I'm saying accurate as to what the witness said.

01:01:45:22 - 01:02:07:16
And that accurate is what actually happened. So if the witness says, oh no, no, no, no, no, I said no. And this has me as yes, they can't change the transcript, but they can. There's an erratic sheet on the back that's got, you know, it's got lines for, you know, line number, page number, whatever. And, the witness can say page six, line nine through 12.

01:02:07:24 - 01:02:25:05
That's not what I said. It doesn't change the transcript. It just says, look, this is my opinion. That's you know, that's kind of my input on that. So that's called reserving your signature. Or they can waiver their signature, which means

essentially they trust that the court reporter has done a good job, and you know, they think it's fine.

01:02:25:05 - 01:02:51:27
They don't need to see the transcript. It's 5050 and it has never come up at trial in my experience. So it's not a huge deal, but it happens at the end of every deposition. So when someone says signature, you'll know what they mean. Usually when someone says signature, the asking party, you know, the the deposing part, the opposing attorney will explain the signature options.

01:02:52:00 - 01:03:08:29
Or, you know, they can say, do you want to explain it to the other counsel and the other the other counsel can explain it. Not a big deal happens pretty much every time. But I've never seen it come up, at trial. And rarely has there been an erratic sheet. You know, it's been filled out. It happens.

01:03:09:01 - 01:03:38:27
But it's pretty rare when that actually comes to pass. So that's what I have. For this, I want to let everyone know if you have any questions about, that I haven't answered. My email is Jordan at Jay Marsh Law.com. Our phone number is 224220 9000. Again, we do mostly civil rights and plaintiffs personal injury cases.

01:03:39:00 - 01:04:03:27
The bottom line with depositions is they're incredibly powerful tool A, they can change the course of a case even in ways you didn't expect. But the only way to take advantage is to prepare and know your case and sit down and just think. Think through things. And the best way to kind of ignite your mind, to think through things, is to go through these exhibits.

01:04:03:29 - 01:04:21:09
What is it that I want to ask? Oh geez, I forgot about this issue. I forgot about this issue because often a deposition will take place 6 to 8 months in the into a into a case and all that stuff in the beginning that you were fighting over, you forgot. So now you're looking at everything. And now you're thinking about it.

01:04:21:11 - 01:04:45:10
But you really want to take full advantage of the opportunity to get in that room and ask that witness whatever you want about the case. But you can't really do that effectively unless you prepared. Always prepare and always think about how people answer questions and use your experience as a human being in all walks of life, because that's what the law is.

01:04:45:10 - 01:04:49:27
The law is about people and how people act and how people respond, and how people speak

01:04:49:29 - 01:04:56:23
the more you know about the way people talk and how people answer questions and people's motivations.

01:04:56:28 - 01:05:07:12
The more you know about that from your entire life, the better a trial lawyer you will be, the better a litigator lobby and the better a disposer you will be. Thank you.

Resources

Resources Specific to this Course

In addition, please see the resources cited within the material.

Resources for the Legal Professional

ABA Center for Professional Responsibility - www.abanet.org/cpr

Chicago Bar Association - www.chicagobar.org

Commission on Professionalism - www.2civility.org

Judicial Inquiry Board - http://www.illinois.gov/jib

Illinois Board of Admissions to the Bar - www.ilbaradmissions.org

Illinois Department of Financial and Professional Regulation - www.idfpr.com/default.asp

Illinois Lawyers' Assistance Program, Inc - www.illinoislap.org

Illinois State Bar Association - www.isba.org

Illinois Supreme Court - www.state.il.us/court

Lawyers Trust Fund of Illinois - www.ltf.org

MCLE Program - www.mcleboard.org