



Online CLE

Depositions in Oregon

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Chapter 3

Presentation Slides: Depositions in Oregon

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Depositions in Oregon

Oregon State Bar, Practicing Law in Oregon
Webcast CLE

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Overview

- The Basics
- Taking a Deposition
- Defending a Deposition

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I. The Basics

A. What is it?

1. Discovery and trial tool.
2. Special types
 - a) Corporate.
 - b) Perpetuation
 - c) Deposition by written questions
 - d) Foreign depositions

I. The Basics

B. Why do it?

1. Reasons to take a deposition
2. Reasons not to take a deposition

C. How to do it

1. Rules
 - a) FRCP 27-32, LR 27 - 30
 - b) ORCP 37-41, UTCR 5.130, 5.140

I. The Basics

C. How to do it

2. Other sources of info

a) Civil Motion Panel Statements of Consensus

C. Depositions

1. Attendance of Experts – Attendance of an expert at a deposition has generally been allowed, but has been reviewed on a case-by-case basis upon the motion of a party.
2. Attendance of Others – Persons other than the parties and their lawyers are generally not allowed to attend a deposition. Upon a showing of need, exceptions have been granted.
3. Out-of-State Parties – A non-resident plaintiff is normally required to appear at plaintiff's expense in Oregon for depositions. Upon a showing of undue burden or expense, the court has ordered, among other things, that plaintiff's deposition occur by telephone with a follow-up

I. The Basics

C. How to do it

2. Other sources of info

b) Multnomah Bar Association Deposition Guidelines

MULTNOMAH COUNTY DEPOSITION GUIDELINES Presented by the Multnomah Bar Association Court Liaison Committee.

The attorneys and judges of Multnomah County have asked for clarification of local deposition practice. These guidelines are the result of a collaboration between the bench and bar, and are designed to provide uniformity and thereby reduce disputes during discovery depositions. No attempt is made to cover every potential area of dispute; instead, the intent is to cover the majority of avoidable problems arising during discovery depositions.

SCOPE OF DEPOSITION. ORCP 36B(1) provides that any matter not privileged may be inquired into during deposition if reasonably calculated to lead to admissible evidence. If unreasonable or bad faith deposition techniques are being used, the deposition may be suspended briefly, and a motion to limit pursuant to ORCP 39E may be made and heard by an available judge.

OBJECTIONS. ORCP 39D(3) creates a mechanism so that the attorney whose question is objected to may accept the objection as an invitation to correct an alleged defect in the question; rejection of the invitation may result in exclusion of the question and answer at trial. Attorneys should not state anything more than the legal grounds for the objection to preserve the record, and objection should be made without comment to avoid contamination of the answers of the witness. Argument in response to the objection is neither necessary nor desirable.

INSTRUCTIONS NOT TO ANSWER. The only basis for an instruction not to answer a question reasonably calculated to lead to the discovery of admissible evidence is in response to an attempt by the attorney taking the deposition to inquire into an area of privacy right, privilege, an area protected by the constitution, statute, work product, or questioning amounting to harassment of the witness. Any other objection to inquiry, such as lack of foundation, competence, asked and answered, etc., can be preserved with recitation of a brief objection.

I. The Basics

C. How to do it

2. Other sources of info

c) Oregon State Bar Books

- 1) Look to for detail on how to take deposition of parties out of state or in foreign countries
- 2) Subpoenaing non-party witnesses.
- 3) Protective orders

I. The Basics

C. How to do it

3. When

- a) Scheduling
- b) Notice
- c) Length of deposition
- d) After proper preparation

II. Taking a Deposition

A. Preparation

1. Know the facts
2. Know the law
3. Will you need an expert to help you prepare?
Review pleadings
4. Exhibits

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II. Taking a Deposition

B. Make an Outline

5. Outline the Examination
 - a) By topic
 - b) By legal elements of claims/defenses
 - c) Chronological
 - d) Be flexible - ability to shift questioning could garner more honest answers if you catch the witness off balance.
 - e) Focus general to specific

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II. Taking a Deposition

C. The examination

1. Attitude/ Mindset
2. Preliminaries
 - a) Establish baseline of understanding of oath, use of deposition.
 - b) Establish competency (i.e. not impaired).
 - c) Ask what they did to prepare, who they talked with, what documents they reviewed.

II. Taking a Deposition

C. The examination

3. General guidance
 - a) Broad discovery questions to get info
 - 1) who, what, when, where, why
 - 2) LISTEN LISTEN LISTEN
 - b) Watch facial reactions to documents, photos
 - c) Ask short questions. Break long questions up into multiple questions.
 - d) Don't use double negatives.

II. Taking a Deposition

C. The examination

4. Using exhibits

- a) Describe what's being presented and get confirmation of authenticity.
- b) Identify by Bates Number, or page number if premarked, to ensure questioner and witness are literally on same page, and to ensure a juror reviewing the transcript later will know what the document is, not just hear number.

II. Taking a Deposition

C. The examination

5. Types of questions

- a) Background
- b) Summarizing questions
- c) Open questions
- d) Closed/leading questions

II. Taking a Deposition

C. The examination

6. Tips for getting better answers

- a) Watch for absolutes
 - 1) Example: A: "I was the only person asked to stay late." Follow up Q: how many people were in the office when you were asked to stay? A: "just me."
 - 2) Drill down for specifics.
- b) Equivocal answers – if "I don't recall" ask what they do remember; set parameters.
- c) Confronting an evasive witness
 - 1) The law requires you to answer.
 - 2) Rephrase the question.

II. Taking a Deposition

C. The examination

7. When to stop

- a) When you have all the answers you need for (1) your dispositive motion; (2) to know you need to settle

III. Defending a Deposition

A. Preparing the witness

1. Explain procedure, potential uses of deposition
2. Instruct them not to bring anything with them.
3. Instruct them what to wear
4. General tips – see article
5. Witness Dos and Don'ts

III. Defending a Deposition

B. Objections

1. Preserve your objections, but use them judiciously.
2. See deposition guidance in civil motion panel statements of consensus on form of objections.
3. Typical objections
 - a) Compound
 - b) Calls for speculation
 - c) Calls for legal conclusion
 - d) Too ambiguous
 - e) Asked and answered
 - f) NOT hearsay, irrelevant,

III. Defending a Deposition

B. Objections

4. Dealing with harassing questions

- a) Keep everything on the record
- b) Call the judge
- c) Before you call the judge remind opposing counsel that attorney fees may be awarded to losing party (LR 30-6)

III. Defending a Deposition

C. Cross

1. Cross if you need something corrected or clarified for the record.

D. Read and sign

1. If you don't reserve the right to read and sign you waive it. FRCP 30(e)

Thank you!

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