

DEPOSITION PREPARATION – 3 EASY STEPS

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1. PREPARE THE SETTING

Scheduling

- ARCP 29 – parties can stipulate, in writing, to almost any aspect of the deposition procedure
- ARCP 30 – primary rules for depositions upon oral examination
- Determine method of deposition
- Determine if multiple, separate depositions of same witness will be needed
- Consider deposing multiple witnesses within same time frame / schedule
- Determine location – considerations vary for parties, non-parties, corporate agents
- Determine date and time for deposition – keep witness’ interests in mind
- Coordinate court reporting services
- Coordinate travel arrangements for witness

Noticing

- ARCP 30(b) provides guidance
- “Reasonable notice” is the standard
- Leave of court required for noticing within 30 days of initiation of lawsuit, unless exceptions of ARCP 30(a) apply
- Determine what documents witness must bring
- ARCP 34 – request for party to produce documents
- ARCP 45 – subpoena procedures for non-parties, attendance & document production

2. **PREPARE YOURSELF**

Attitude / Mental Approach

- Set clear goals
- Avoid hostile attitude towards witness / opposing party
- Avoid viewing deposition in same light as a closing argument at trial
- Temper aggressive, over-eager desire to “get your answers” at any cost

Educate Yourself

- Thoroughly research law relevant to all issues in the case
- Identify all legal theories / causes-of-action / defenses
- Identify all relevant facts – do not skimp on pre-discovery investigation
- Develop overall theory of the case – create the “story” and know your roadmap
- Thoroughly research opponent’s case

Outline

- Good outline ensures all bases are covered in the deposition
- Outline by **topic**
- Do not attempt to spell out all questions in the outline
- Generate potential questions, but do not cast them in stone
- Use various methods to determine potential questions and topical areas of discussion: brainstorm, review pleadings, review discovery completed to-date, review documents, talk with client and experts

3. **PREPARE THE WITNESS**

Customer Satisfaction

- Keep witness’ interests, needs, comfort, & convenience in mind at all times

- Do not skimp on prep time with your witness
- Maintain goal of reducing the witness' anxiety throughout preparation
- Keep the witness informed and in the loop – review deposition notices, objections, and case file with the witness
- Provide assurance at every turn – assurance reduces anxiety

Practice

- Prepare the witness – do not coach
- Let specifics of case and the deposition guide the quantity and quality of practice

Specifics

- Best advice to witness – “tell the truth – briefly”
- Be cognizant of witness' experience with depositions
- Educate the witness on the procedure of the deposition