

DEPOSITION GUIDELINES

As adopted by the Board of Commissioners November 20, 2014

1. General statement

Depositions should be dignified, respectful proceedings for the discovery and preservation of evidence. To the extent possible, depositions should be conducted just as examinations of witnesses during trials or hearings. See F.R.Civ.P. 30(c)(1) (“The examination and cross-examination of a deponent proceed as they would at trial under the Federal Rules of Evidence, except Rules 103 and 615.”).

2. Guidelines¹

- A. In scheduling depositions a lawyer should be mindful of the scheduling considerations set forth in The Mississippi Bar’s “Standards of Litigation Conduct.”
- B. A lawyer should limit depositions to those that are necessary to develop the claims or defenses in the pending case or to perpetuate relevant testimony.
- C. A lawyer should conduct a deposition with courtesy and decorum and must never verbally abuse or harass the witness, engage in extended or discourteous colloquies with opposing counsel or unnecessarily prolong the deposition.
- D. During a deposition, a lawyer should assert an objection only for a legitimate purpose. Objections should never be used to obstruct questioning, communicate improperly with the witness, intimidate, harass the questioner, or disrupt the search for facts or evidence germane to the case. See F.R.Civ.P. 30(c)(2) (“An objection must be stated concisely in a nonargumentative and nonsuggestive manner.”).
- E. A lawyer may instruct a witness not to answer in only limited circumstances. See F.R.Civ.P. 30(c)(2) (“A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3).”).

¹ For in-depth guidance on preparing for depositions, handling unexpected developments, responding to difficult opposing counsel, and managing objections in depositions, see “Depositions,” *Practical Law The Journal/Litigation* (October 2013) at 34-47.

- F. A lawyer may confer with a non-client witness during a break in the witness' deposition only if permitted by the judge before whom the case will be tried or otherwise approved by order of the court.
- G. Other than as provided in these guidelines, a lawyer should not advise a client how to answer a question while the question is pending.
- H. When the witness is not represented by counsel at the deposition, the deposing attorney should refrain from giving legal advice to the witness. However, the deposing attorney should explain to the unrepresented witness at the outset of the deposition that the witness will have an opportunity to read the transcript after the deposition has concluded and make any necessary corrections. No attempt should be made to induce an unrepresented witness to waive the witness' right against self-incrimination or the witness' attorney-client privilege.
- I. Lawyers should make every reasonable effort to confer among themselves to resolve disagreements that arise during or in regard to depositions. Only after those efforts have been exhausted, and a resolution appears impractical or impossible, should the court be contacted.