

DEPOSITION LENGTH

- Not limited to one day; deposition notice stating “day to day thereafter until completed” is valid and enforceable. Sprague v. Equifax, Inc., 166 Cal.App.3d 1012, 1041-1042 (1985) [but maximum depo. length not addressed].

“OFF THE RECORD”

- Going “off the record” is not permitted unless stipulated by counsel. CCP § 2025.470. **Exception:** Seeking a protective order for bad faith or harassing questioning. CCP §§ 2025.470; 2025.420.

PARTIES PRESENT

- Discovery Act does not specify who may attend a deposition. However, court may issue a protective order to exclude “designated persons, other than the parties to the action and their officers and counsel.” CCP § 20205.420(b)(12). A party to litigation may not be excluded from a deposition even if shown that deponent would be “intimidated” by their presence. Willoughby v. Sup. Ct. (Lui), 172 Cal.App.3d 890, 892 (1985). Yet court may exclude corporate officers who are to be deposed so as to ensure truthful testimony. Lowy Develop. Corp. v. Sup. Ct. (Fontenla), 190 Cal.App.3d 317, 321 (1987).

INTERPRETERS

Any interpreter must be certified pursuant to Gov. Code § 68562, et seq. Gov. Code § 68561. Interpreter required to furnish credentials and give statement at outset. Gov. Code § 68561(h).

WRITTEN OBJECTIONS RE NOTICE OF DEPOSITION

- Written objections regarding defects in the deposition notice (date, time, place, documents requested, etc.) must be served at least 3 days by personal service (or 4 days by other proper methods) before noticed deposition date; failure to timely object based on notice **waives** objection. CCP § 2025.410.

OBJECTIONS RE ERRORS OR IRREGULARITIES IN DEPOSITION

- “Errors or irregularities of any kind occurring at the oral examination that might be cured if promptly presented are waived unless a specific objection to them is timely made during the deposition. These errors and irregularities include, but are not limited to, those relating to the manner of taking the deposition, to the oath or affirmation administered, to the conduct of a party, attorney, deponent, or deposition officer, or to the form of any question or answer.” CCP § 2025.460(a).

OBJECTIONS RE QUALIFICATIONS OF DEPOSITION OFFICER

- Deposition officer (court reporter) must be authorized to administer oath, not financially interested in action, and not a relative or employee of any parties or counsel. CCP § 2025.320(a)-(d). Must offer all services to all parties/attorneys. CCP § 2025.320(b). Objections to qualifications of the deposition officer or the oath administered are waived unless made before the deposition begins or as soon as ground for that objection becomes known or could be discovered by reasonable diligence. CCP §§ 2025.340(e) [officer]; 2025.460(b) [oath].

OBJECTIONS RE AUDIO OR VIDEO RECORDING OF DEPOSITION

- Deposition may be taken by videotape or audiotape only if set forth in the deposition notice. CCP § 2025.330(c). Party recording deposition must make same available to other parties’ counsel. CCP § 2025.330(d); CRC 333(a). Operator of audio or video recording equipment must be competent to set up same. CCP § 2025.340(b). Operator must provide oral or written statement at beginning of deposition. CCP § 2025.340(h). Objections re operator must be “timely made” during deposition. CCP § 2025.460(b).

IMPROPER CONDUCT BY COUNSEL CONDUCTING DEPOSITION

- **Harassing or Abusive Questioning:** Prohibition on examination “being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party.” CCP § 2025.470. If such occurs, may suspend deposition and move for protective order. . .” CCP §§ 2025.470; 2025.420(b). “Persisting, over objection and without substantial justification, in an attempt to obtain information outside the scope of permissible discovery.” is prohibited. CCP § 2023.010(a). No per se prohibition on ‘tag team’ questioning. Rockwell Int’l, Inc. v. Pos-A-Traction Industries, 712 F.2d 1324, 1325 (9th Cir. 1983).

IMPROPER CONDUCT BY DEPONENT’S COUNSEL

- **Coaching:** Coaching the deponent is potentially sanctionable as a discovery abuse under CCP § 2023.010, Tucker v. Pacific Bell Mobile Services, 186 Cal.App.4th 1548, 1562 (2010). Unilaterally going off the record is not allowed. CCP § 2025.470.
- **Making Improper Objections:** “Making, without substantial justification, an unmeritorious objection to discovery” is a sanctionable misuse of the discovery process. CCP § 2023.010(e).
- **Instructing Witness Not to Answer:** Normally improper for counsel to instruct witness not to answer a question. Stewart v. Colonial Western Agency, Inc., 87 Cal.App.4th 1006, 1015 (2001). Defects in the form of the question are not grounds for instruction not to answer. Id., at 1014. Deposing counsel may suspend or complete deposition and later seek order compelling answer. CCP § 2025.460(d). **Exception:** May instruct deponent not to answer, suspend deposition and move for protective if examination “being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party.” CCP §§ 2025.470; 2025.420(b).

PRODUCTION OF DOCUMENTS

- **Objecting to Documents Requested in Deposition Notice:** Objections to producing documents requested in a deposition notice must be timely served; failure to timely object based on notice **waives** objection. CCP § 2025.410. [See, *supra*, “**Written Objections Re Notice of Deposition**”] If deponent fails to produce documents, deposing counsel may adjourn or complete deposition without waiving right to move for order to compel production of documents requested in notice. CCP §§ 2025.460(d); 2025.480.
- **Right to Inspect Documents Reviewed:** Documents shown to the deponent (party or nonparty) to refresh his or her recollection in preparation for the deposition must be produced. Int’l. Ins. Co. v. Montrose Chemical Corp. of Calif., 231 Cal.App.3d 1367, 1372-1373 (1991). **Includes privileged documents:** Showing privileged documents to a deponent to refresh recollection means any privilege is waived. Kerns Const. Co. v. Sup. Ct. (Southern Counties Gas Co.), 266 Cal.App.2d 405, 410 (1968). **Contrary view:** If documents were selected by deponent’s counsel, they reflect counsel’s opinion and are absolutely protected as “opinion work product,” and are “not discoverable under any circumstances.” CCP § 2018.030: Sullivan v. Superior Court (Sningsola). 29 Cal.App.3d 64. 74 (1972).

DEPONENT MAY BE ASKED TO PERFORM PHYSICAL ACT

- The court’s power to order a deponent “to answer any question” (CCP § 2025.480(a)) includes ordering nonverbal responses such as re-enacting event or handwriting sample. Emerson Elec. Co. v. Sup. Ct. (Grayson), 16 Cal.4th 1101, 1111-1113 (1997).

AREAS OF QUESTIONING RESTRICTED BY STATUTE

- **Financial Condition of Party:** No pretrial discovery by “plaintiff” regarding “the financial condition of the defendant” or profits the defendant obtained from wrongful conduct at issue except by court order. Civil Code § 3295(a) and (c).
- **Insurance Coverage:** No discovery re “nature and substance” of insurance carrier’s dispute regarding coverage, but re existence and contents of policy, identity of carrier, coverage nature and limits, and whether coverage dispute exists are allowed. CCP § 2017.210.
- **Sexual History:** Discovery regarding sexual history of plaintiff limited/restricted, unless by court order. CCP § 2017.220(a).
- **Immigration Status:** Civil Code § 3339, Gov. Code § 7285, Labor Code § 1171.5; Rodriguez v. Kline, 186 Cal.App.3d 1145, 1148 (1986); Hernandez v. Paicius, 109 Cal.App.4th 452, 460 (2003); Salas v. Sierra Chemical Co., 198 Cal.App.2nd 9 (2014).

GENERAL PRINCIPLES

- **Broad Leeway On Questions:** May seek discovery regarding any relevant matter that is not privileged, “if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.” CCP § 2017.010. Court has power to compel responses if deponent “fails to answer any question.” CCP § 2025.480(a).
- **Limits On Objections To Questions:** Form of the question objections are proper. CCP § 2025.460(b). Objections regarding privilege and work product are proper as well. CCP § 2025.460(a). However, objections regarding “relevancy, materiality, or admissibility at trial of the testimony or of the material produced are unnecessary and are not waived” if not made during the deposition. CCP § 2025.460(c).

VALID OBJECTIONS – INSTRUCTION NOT TO ANSWER PROPER

These objections, except possibly privacy, are waived unless “timely made” during deposition. CCP § 2025.460(a) and (b).

Privilege & Privacy

- **Attorney-Client Privilege:** The privilege must be specifically claimed. CCP §§ 2017.010; 2025.460(a).
- **Confidential:** Valid only if deponent claims applicable confidentiality privilege, e.g., attorney-client privilege. CCP §§ 2025.460(a).
- **Trade Secret:** The privilege must be specifically claimed. CCP §§ 2017.010; 2025.460(a).
- **Privacy, invasion of:** Valid under U.S. Constitution and California Constitution, Art. 1, Sec. 1. Not necessarily waived if not objected to. Boler v. Sup.Ct. (Everett), 201 Cal.App.3d 467, 472, fn. 1 (1987); and Mendez v. Sup. Ct. (Peery) 206 Cal.App.3d 557, 564 (1988).
- **Privileged:** Specific privilege, e.g., psychotherapist-patient privilege, must be specifically claimed. CCP §§ 2017.010; 2025.460(a).
- **Work Product, attorney’s:** Must be expressly asserted. CCP §§ 2017.010; 2025.460(a).

Bad Faith & Harassing

- **Bad Faith:** Prohibition on examination “being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party.” CCP § 2025.470. Suspend deposition and move for protective order. CCP §§ 2025.470; 2025.420(b).
- **Annoying/Embarrassing/Oppressive:** Must be “unreasonably” annoying, embarrassing or oppressive. CCP § 2025.470.
- **Harassing:** Prohibition on examination “being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party.” CCP § 2025.470. Suspend deposition and move for protective order. CCP §§ 2025.470; 2025.420(b).

Subject Matter

These objections are not waived if not raised at deposition since they address competency and relevancy, not form. CCP §2025.460(c). However, deponent’s counsel should still object and instruct not to answer.

- **Contention, calls for:** Deponent not obligated to provide legal contentions. Rifkind v. Superior Court (Good), 22 Cal.App.4th 1255, 1259 (1994); Pember v. Sup. Ct. (Young), 66 Cal.2d 601, 604 (1967).
- **Expert Opinion, calls for:** A deponent not yet designated as an expert need not provide expert opinion testimony, including their present opinion of the propriety of their past acts. Cty. Of Los Angeles v. Sup. Ct. (Martinez), 224 Cal.App.3d 1446, 1455 (1990), citing CCP § 2034. See also, Scarano v. Schnoor, 158 Cal.App.2d 612, 622 (1958).
- **Legal reasoning or theory, calls for:** Deponent not obligated to provide legal reasoning or theories. Sav-On-Drugs, Inc. v. Superior Court, 15 Cal.3d 1, 5 (1975); Rifkind v. Superior Court (Good), 22 Cal.App.4th 1255, 1259 (1994).
- **Relevance:** Only (very rarely!) valid if not “reasonably calculated to lead to the discovery of admissible evidence.” CCP § 2017.010.

VALID OBJECTIONS – BUT INSTRUCTION NOT TO ANSWER IMPROPER

These form objections are waived unless “timely made” during deposition; instruction not to answer is improper. CCP § 2025.460(b).

- **Argumentative:** CCP §§ 2017.010; 2025.460(c).
- **Asked and Answered:** This objection, coupled with a refusal to answer, requires a “hearing in the trial court” and thus “constitutes a greater hardship on all parties (and on the courts) than would a repetitious reply.” Coy v. Sup. Ct. (Wolcher), 58 Cal.2d 210, 218 (1962)
- **Assumes Facts Not In Evidence:** West Pico Furniture Co. v. Sup. Ct. (Pacific Finance Loans), 56 Cal.2d 407, 421 (1961); Greyhound Corp. v. Sup. Ct. (Clay), 56 Cal.2d 355, 392 (1961).
- **Compound:** CCP § 2025.460(b); Evid. Code § 765.
- **Narrative answer, calls for:** CCP § 2025.460(b); Evid. Code § 765.
- **Overbroad:** Evid. Code § 765.
- **Misstates a Witness/Misstates Testimony:** Evid. Code § 765.
- **Vague/Ambiguous/Unintelligible:** Valid objection only if question is wholly unintelligible; must be answered if “the nature of the information sought is apparent.” Deyo v. Kilbourne, 84 Cal.App.3d 771, 783 (1978) [but case addressed only interrogatories].

OBJECTIONS THAT SHOULD BE WITHHELD – INSTRUCTION NOT TO ANSWER IMPROPER

These objections are not waived by failing to raise at deposition. CCP § 2025.460 (c).

- **Answer/Information known to propounding party:** Alpine Mutual Water Co. v. Sup. Ct. (Knolls), 259 Cal.App.2d 45, 54 (1968).
- **Conclusion, calls for:** CCP §§ 2025.460(c); 2017.010; Greyhound Corp. v. Sup. Ct. (Clay), 56 Cal.2d 355, 392 (1961).
- **Controversial:** CCP §§ 2025.460(c); 2017.010; Cembrook v. Sup. Ct. (Sterling Drug Corp.), 56 Cal.2d 423, 429 (1961).
- **Cumulative:** TGB Ins. Services Corp. v. Sup. Ct. (Zieminski), 96 Cal.App.4th 443, 448-449 (2002).
- **Fishing Expedition:** “[T]he claim that a party is engaged upon a fishing expedition is not, and under no circumstances can be, a valid objection to an otherwise proper” line of questioning. Greyhound Corp. v. Sup. Ct. (Clay), 56 Cal.2d 355, 386 (1961).
- **Foundation, lack of:** CCP §§ 2025.460(c); 2017.010. Greyhound Corp. v. Sup. Ct. (Clay), 56 Cal.2d 355, 392 (1961).
- **Hearsay, calls for:** CCP §§ 2025.460(c); 2017.010. Greyhound Corp. v. Sup. Ct. (Clay), 56 Cal.2d 355, 392 (1961).
- **Inadmissible at Trial:** CCP §§ 2025.460(c); 2017.010. Greyhound Corp. v. Sup. Ct. (Clay), 56 Cal.2d 355, 392 (1961).
- **Leading Question:** CCP §§ 2025.460(c); 2017.010. Greyhound Corp. v. Sup. Ct. (Clay), 56 Cal.2d 355, 392 (1961).
- **Opinion, calls for:** CCP §§ 2025.460(c); 2017.010; Greyhound Corp. v. Sup. Ct. (Clay), 56 Cal.2d 355, 392-393 (1961). **Exception:** Valid objection if question calls for expert opinion from deponent not yet designated as expert; instruct not to answer Cty. Of Los Angeles v. Sup. Ct. (Martinez), 224 Cal.App.3d 1446,1455 (1990), citing CCP § 2034. [See **Expert Opinion**, *supra*.]
- **Relevance:** CCP § 2025.460(c), 2017.010. “Relevance objections should be held in abeyance until an attempt is made to use the testimony at trial.” Stewart v. Colonial Western Agency, Inc., 87 Cal.App.4th 1006, 1015 (2001).
- **Speculation, calls for:** Evid. Code §§ 702; 800.