

# Table of Contents

<b>Introduction.....</b>	1
<b>Chapter 1: Scheduling and Noticing Depositions.....</b>	5
A. Getting Started.....	5
1. Setting the Date.....	5
2. Witness Fee.....	6
a. Serving the check.....	6
b. Calculating the amount.....	8
3. Noticing the Deposition.....	8
a. Preparing the notice.....	8
b. Serving the notice.....	10
c. Obtaining documents.....	11
d. Designating documents.....	12
e. Duration allowed.....	12
f. Sequence.....	13
g. Limitations.....	15
B. Preventing the Deposition.....	22
1. Discovery is Both Broad and Limited.....	22
2. The Decision Whether to Oppose the Taking of a Deposition.....	25
3. Motion for a Protective Order.....	26
a. Rules 26(a) and (c).....	26
b. Grounds.....	27
4. Motion to Quash.....	31
5. Motion to Compel.....	31
6. Discovery Conference.....	33
7. Do Not Ignore the Notice.....	35
8. Stay.....	36

C. 30(b)(6) Depositions.....	37
1. Generally.....	37
2. Preparing the Notice.....	38
3. Receiving the Notice.....	40
a. Consider the purpose.....	40
b. Inspect and object.....	40
c. Duty to designate.....	40
d. Duty to prepare.....	42
4. Sanctions.....	43
5. Designee's Answers Binding on the Corporation.....	44
6. Leading Questions Allowed of 30(b)(6) Designee.....	45
7. Corporation Not Entitled to Fifth Amendment Privilege.....	45
D. Expert Depositions.....	46
1. Generally.....	46
2. Service of the Notice.....	46
3. Responsibility for Payment.....	47
4. Location of Deposition.....	48
5. Consulting Experts.....	49
a. Generally.....	49
b. Exceptions.....	50
c. Re-designating a testifying expert as a consulting expert.....	50
6. Medical Malpractice.....	51
E. Taking Depositions for Trial.....	51
1. <i>De Bene Esse</i> Generally.....	51
2. Distinguishing a <i>De Bene Esse</i> Deposition from a Discovery Deposition.....	52
3. Treating Physicians and Rule 30(i).....	54
F. Out-of-State Depositions.....	55
1. Within the United States.....	55
a. Generally.....	55
b. Informal subpoena.....	56

---

**Table of Contents**

---

c. Uniform Interstate Depositions and Discovery Act.....	57
d. Motion for Commission of Foreign Subpoena.....	58
2. Outside of the United States.....	59
G. Videotaped Depositions.....	60
1. When Allowed.....	60
2. Notice.....	60
3. Videographer.....	60
4. Procedure.....	61
a. Beginning the video deposition.....	61
b. During the video deposition.....	62
c. Finalizing and storing the video.....	62
d. Objections.....	62
e. Deciding whether to video.....	63
H. Telephonic and Other Remote Depositions.....	65
1. Generally.....	65
2. Logistics.....	65
3. Video-Conferencing.....	65
4. Mobile Video-Conferencing.....	65
I. Non-Stenographic Depositions.....	66
<b>Chapter 2: Conducting the Deposition.....</b>	<b>69</b>
A. Depositions Generally.....	69
B. Procedure.....	69
1. Prior to the Deposition.....	69
2. Commencing the Deposition.....	70
3. During the Deposition.....	73
a. Professional conduct.....	73
b. Examination.....	74
c. Terminating the deposition.....	75
d. Multiple attorneys for a party.....	76
e. Obtaining documents identified during the deposition.....	77
f. Nonverbal responses.....	77

4. Reading and Signing.....	81
a. Effects of changes on an errata sheet.....	81
b. Closing statement to deponent.....	83
C. Objections.....	84
1. Generally.....	84
2. Proper Objections Prior to the Deposition.....	84
a. Errors and irregularities in the notice.....	84
b. Disqualification of the officer.....	84
c. Competency of a witness.....	85
d. Competency, relevancy, or materiality of testimony.....	85
e. Oath or affirmation.....	86
f. Errors and irregularities in the manner of transcription, preparation, signing, certifying, etc. ....	86
g. Failure to appear by lawyer or witness.....	86
3. Proper Objections During the Deposition.....	87
a. Objection to the form.....	87
b. Handling an abuse of “objection to the form”.....	89
c. Catch-all objection.....	90
d. Privilege.....	90
e. Enforcing a limitation on evidence by the court.....	90
f. Bad faith and oppression.....	90
g. Questions outside the scope of discovery.....	90
h. Instructing the witness not to answer.....	91
4. Improper Objections During the Deposition.....	92
a. Generally.....	92
b. Scope of 30(b)(6) notice.....	93
c. Handling improper objections.....	94
5. Conversing With the Witness.....	95
D. Sequestration.....	96
1. Who May Attend.....	96
a. Parties and lawyers.....	97

---

## Table of Contents

---

b.	Potential witnesses.....	97
c.	Others closely associated with the litigation.....	98
d.	The public.....	98
2.	Motion for Sequestration.....	99
E.	Written Questions.....	100
F.	Going Off the Record.....	100
G.	<i>De Bene Esse</i> .....	101
<b>Chapter 3: Use at Trial.....</b>		103
A.	Generally.....	103
B.	Circumstances When a Deposition May Be Admitted Into Evidence at Trial.....	104
1.	Impeachment.....	104
2.	30(b)(6) Depositions.....	105
3.	Unavailable Witness.....	106
a.	The witness is dead.....	107
b.	The witness is greater than 100 miles from the place of trial or hearing.....	107
c.	The witness is unable or unavailable to testify.....	108
d.	A party was unable to procure the attendance of the witness by subpoena.....	109
e.	Exceptional circumstances.....	110
f.	An expert may rely on a deposition in rendering an expert opinion.....	110
C.	Notice of Use of Deposition.....	112
1.	Excerpts and Exhibits.....	112
2.	Objections.....	113
D.	Procedure for Introducing Deposition at Trial.....	113
1.	Impeachment.....	113
2.	All Other Circumstances.....	114
E.	<i>De Bene Esse</i> .....	115
F.	Video Depositions.....	117

G. Use of a Deposition Against a Party Who Was Not a Party at the Time the Deposition Was Taken.....	118
H. Depositions From Other Cases.....	119
 <b>Chapter 4: Court Reporters and Transcripts.....</b>	 121
A. Requirements.....	121
B. Standards.....	122
1. Qualifications.....	122
2. Voluntary Certification.....	122
3. Insurance.....	123
4. Technology.....	123
5. Resume.....	123
C. Deposition Practice.....	124
1. Court Reporter Shall Record the Testimony.....	124
2. Objection to Qualification of the Reporter.....	124
3. Transcripts.....	124
a. Generally.....	124
b. Reading and signing.....	125
c. Types.....	126
d. Filing and retention.....	127
D. Exhibits.....	128
E. Transcript Costs.....	128
F. Telephonic Depositions.....	131
G. Ordering the Transcript.....	132
 <b>Forms List.....</b>	 133
Notice of Deposition.....	135
Notice of Video Deposition.....	137
Notice of Deposition Pursuant to Rule 30(b)(6), SCRCP.....	139
Notice of Deposition of Treating Physician Pursuant to Rule 30(i), SCRCP.....	143
Motion for Protective Order Pursuant to Rule 30(j), SCRCP.....	145
Motion to Take Second Deposition or to Reconvene Deposition.....	149

---

**Table of Contents**

Motion to Compel Deposition.....	151
Motion to Limit or Terminate Deposition.....	155
Motion for Sequestration.....	159
Motion to Take Deposition by Telephone.....	161
Notice of Motion and Motion for Order of Writ of Commission for an Out-of-State Subpoena and Notice of Deposition.....	163
Order for Writ of Commission.....	165
Order for Deposition of Incarcerated Person.....	167
Notice of Deposition Upon Written Questions.....	169
<b>Index.....</b>	<b>171</b>