



Katherine Gallo, Esq.
Discovery Referee, Special Master, and Mediator
1-650-571-1011



THERE'S THIS CASE THAT SAYS . . . (Depositions)

By Katherine Gallo

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Have you ever been in a middle of a deposition and found yourself saying “OBJECTION!! There’s this case that says . . .” but, you can’t quite remember what the name was, where you saw it or even where you might find it. And yet it is right on point. Well, the following is a list of cases and statutes and objections for depositions that you should keep in the back of your legal pad as they may come in handy.

SCOPE OF DEPOSITION

Discovery is permissible if the information sought is relevant to the subject matter involved and it is admissible or reasonably calculated to lead to discovery of admissible evidence. C.C.P. §2017.010

Admissibility is not the test. Weil and Brown, Cal. Prac. Guide: *Civil Procedure Before Trial* (TRG 2006) Section 8:68 (citing C.C.P. §2017.010 citing *Davies v. Superior Court* (1984) 36 C3d 291, 301).

Fishing expeditions are permissible. Weil and Brown, Cal. Prac. Guide: *Civil Procedure Before Trial* (TRG 2006) Section 8:728 (citing C.C.P. § 2017.010 citing *Greyhound Corp. v. Superior Court* (1961) 56 C2d 355, 384).

Identity and location of witnesses are discoverable. C.C.P. § 2017.010.

Existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property is discoverable. C.C.P. § 2017.010.

“Show me” questions (requesting a deponent to demonstrate an action) at a video taped deposition are allowed. *Emerson Electric Co. v. Superior Court* (1997) 16 C4th 1101, 1111.

969G Edgewater Blvd., Suite 345 Foster City, CA 94404
phone: (650)571-1011 fax: (650)571-0793 klgallo@discoveryreferee.com



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Improper to ask a party to state their legal contentions. *Rifkind v. Superior Court* (1994) 22 CA 4th 1255, 1259.

Documents reviewed to prepare for deposition are discoverable. *International Insurance Co. v. Montrose Chemical Corp. of California* (1991) 231 CA3d 1367, 1372-73. However, privileged documents do not lose their privileged status (*Sullivan v. Superior Court* (1972) 29 CA3d 64, 68), unless the witness claims no present memory of the events recorded in a statement given to his or her attorney and uses that statement to testify. *Kerns Const. Co. v Superior Court* (1968) 266 CA2d 405, 410.

CONDUCT DURING DEPOSITION

Team questioning not *per se* abusive. *Rockwell International Inc. v. Pos-A traction Industries* (9th Circuit 1983) 712 F2d 1324, 1325—applying California Law.

Coaching the witness during deposition not prohibited. Weil and Brown, Cal. Prac. Guide: *Civil Procedure Before Trial* (TRG 2006) §8:721. However, *Hall v. Clifton Precision* (ED PA 1993) 150 FRD 525, 528 (decided under Federal Rules) states that “[o]nce a deposition begins, the deponent must be left “on his or her own.”

Deposition officer may not suspend taking testimony unless there is a stipulation of all counsel or the deposition is suspended for a party to seek a protective order. C.C.P. §2025.470.

OBJECTIONS TO QUESTIONS

Objections to form of questions are waived if not raised at the deposition. Weil and Brown, Cal. Prac. Guide: *Civil Procedure Before Trial* (TRG 2006) §8:721 (citing C.C.P. §2025.460(b)).

Instructing witness not to answer is improper unless objecting on grounds of privilege. *Stewart v. Colonial Western Agency, Inc.* (2001) 87 CA4th 1006, 10015.



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Proper Objections

- a) **Ambiguous**
Deyo v. Kilbourne (1978) 84 CA3d 771.
- b) **Calls for contention**
Rifkind v. Superior Court (1994) 22 CA4th 1255.
- c) **Irrelevant to subject matter**
C.C.P. §2017.010.
- d) **Calls for Legal Reasoning**
Sav-On Drugs v. Sup. Ct. (1975) 15 C3d 1.
- e) **Privileged--must state privilege**
- f) **Invasion of privacy**
California Constitution Article I, Section 1.
- g) **Trade Secret**
C.C.P. §2019.210.
- h) **Work Product**
C.C.P. §2018.030.



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Improper Objections

- a) **Answer is known to propounding party**
Alpine Mut. Water Co. v. Sup. Ct. (1968) 259 CA2d 45, 54.
- b) **Argumentative**
C.C.P. §2017.010
- c) **Asked and answered**
Coy v. Sup. Ct. (1962) 58 C2d 210, 218.
- d) **Assumes facts not in evidence**
West Pico Furniture v. Sup. Ct. (1961) 56 C2d 407,421.
- e) **Calls for conclusion**
§2017.010.
- f) **Insufficient foundation**
§2017.010.
- g) **Hearsay**
§2017.010.
- h) **Irrelevant to the issues**
§2017.010.
- I) **Calls for a narrative**
§2017.010.
- j) **Calls for an opinion**
C.C.P. §2017.010.
- k) **Oppressive**
Coy v. Sup. Ct., Supra at 218.