



# A Primer on Depositions

Judge Shayna Beevers Morvant

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# A Primer on Depositions

- Noticing Depositions
- Conducting the Deposition
- Post-Deposition Discovery and Motion Practice
- Uses Prior to Trial
- Admissibility At Trial

# Noticing Depositions

- La. C.C.P. art. 1438, “reasonable notice in writing to every other party”
  - Date, time, location, method and method of recordation
- La. C.C.P. art. 1442, Organizational depositions
  - Name a juridical person
  - State with “reasonable particularity” the deposition topics
  - *Designate one or more officers, directors, managing agents or consenting persons*
  - *May state the matters on which each person will testify*
  - *Prepare each person to testify*

# Nonparties

- La. C.C.P. art. 1437, “[A]ny party may take the testimony of any person, including a party . . . . [c]ompelled by the use of subpoena . . . .”
- La. C.C.P. art. 1438, “reasonable notice in writing to every other party to the action”
- La. Dist. Ct. R. 9.15, “a subpoena shall be filed with the clerk of court at least ten days before the desired appearance date . . . .”

# Other Considerations When Noticing a Deposition

- Order of Discovery, La. C.C.P. art. 1427
- Pre-Deposition Motion Practice
- Video Recording



# Conducting the Deposition

- Order of Questioning
- Essential Preliminary Questioning
- Absent Witnesses

# Objections – Calls to the Judge

- Objections beyond form or privilege
  - Talking objections
  - Argumentative or Suggestive Objections
  - Frustrating a Fair Examination
  - Acting in Bad Faith, Annoying, Embarrassing, or Oppressing
  - Physical signals
- Start by making a record on the record
- Sanctions
  - Costs of deposition
  - Matter re-set
  - Other



# Post-Deposition Discovery and Motion Practice

- Requests for Production of Documents
- Motion to Compel
- Motion for Sanctions



# Uses Prior to Trial

- Negotiation or Settlement Objectives
  - How does witness appear under pressure
  - Credibility?
  - Mediation
- Summary Judgment or Other Motions

# Admissibility At Trial

- Generally entire transcript is not admissible at trial
- Exceptions
  - Preserved Testimony
  - Prior Inconsistent Statements
  - Admission of a Party Opponent
  - Refreshing Witness Memory

# Preserved Testimony

- Unavailable Witness
- Preparation and Questioning Different
- Method of Deposition
  - Reading
  - Video

# Admission of Party Opponent

- An adverse party may use for any purpose the deposition of a party, or anyone who, when deposed, was the party's officer, director, managing agent, or designee.

# Refreshing Witness Memory

- “I don’t recall”
- Method
  - Show the transcript
  - If works to refresh, and they may answer, transcript is still inadmissible

# Prior Inconsistent Statement

- The prior Inconsistent statement is not hearsay and can be used to impeach the witness
- Method for impeachment
- Use same method if Refreshing Witness Memory did not work



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