

Depositions for New Lawyers

To object or not object?

“That is the question.”

Hamlet

- What to do when you hear them
- When for you to make them

Billy Madison's "To Be or Not to Be"

Lindsay Dunn, *Thompson, Coe, Cousins & Irons*; Brendan Rodman, *Messner Reeves*

Once upon a Midsummer Night's Dream....

- ▶ Setting the stage. Why are we talking about this?
- ▶ Preserving the record
- ▶ Remember the power of Rule 32(a) – use of depositions at trial
- ▶ “This above all: to thine own self be true.” Hamlet

OBJECTIONS- Know the Rules.

“Brevity is the soul of wit.”

Hamlet

- ▶ C.R.C.P. 30(d)(1):

- ▶ Any objection shall be stated concisely in a non-argumentative and non-suggestive manner.

- ▶ Fed.R.Civ.P. 30(c)(2)

- ▶ (2) ...An objection must be stated concisely in a nonargumentative and nonsuggestive manner.

Stating Objections



- An objection must be stated concisely in a nonargumentative and nonsuggestive manner.
- When making objections review the rules including local and judge's rules
- "Reputation, reputation, reputation! O, I have lost my reputation! I have lost the immortal part of myself, and what remains is bestial." Othello

Stating Objections

“Double, double toil and trouble.”

Macbeth

- Do Not Worry About:
 - Relevancy/Materiality
 - Prejudicial
 - Hearsay (if not curable)
 - Confusion of Issues
 - Undue Delay/Waste of Time/Cumulative Evidence
 - Competency of Witness

Stating Objections

- MUST Be Made At or Before:
 - Notice
 - Content of deposition
 - Qualifications of Officer
 - “Though thus be madness,
yet there is method in it.”
Hamlet

Objections MUST Be Made At Deposition:

Form of Question

- Leading- depending on witness
- Ambiguous/Vague/Confusing
- Argumentative – “Something is rotten in the state of Denmark.” Hamlet
- Asked/Answered
- Assuming Facts Not in Evidence
- Compound Question
- Misleading Question
- Misquoting the Witness

Objections MUST Be Made At Deposition: Form of Question

- Narratives (Questions or Responses)
- Speculation
- Unfair Characterization
- Calling for a Legal Conclusion
- Calling for Improper Lay Opinion
- Calling for Opinion beyond an Expert's Qualifications
- "Jesters do oft prove prophets."
King Lear

Objections MUST Be Made At Deposition: Foundation objections

- ▶ Authenticity
- ▶ No Personal Knowledge
- ▶ Best Evidence
- ▶ Objections to question must be made before the witness answers
- ▶ Objections to the Answer
- ▶ Privilege
- ▶ “Some are born great, some achieve greatness, and some have greatness thrust upon them.” Twelfth Night



Weighing and Deciding to Object

Counsel doth protest too much me
thinks! See e.g. Hamlet

- ▶ Is objection waived if not made?
- ▶ Do advantages of objecting outweigh the disadvantages?
- ▶ When in doubt object.
- ▶ Object in a timely manner.
- ▶ Be specific and state all grounds.
 - ▶ “Love all, trust few. Do wrong to none.” -
All’s Well That Ends Well.

Instructions Not to Answer-

“There is nothing either good or bad but thinking makes it so.” Hamlet

- ▶ **Justifications:**

- ▶ Necessary to preserve a privilege
- ▶ to enforce a limitation ordered by the court
- ▶ or to present a motion under Rule 30(d)(3)- motion to terminate or limit

- ▶ **Considerations:**

- ▶ How will the other side respond?
- ▶ Will they likely succeed?
- ▶ What is the potential cost to you/your client?

“All the world’s a stage...” As you
Like It

**YOUR TURN to practice
objections to objectionable
questions?**

**And state all grounds for the
objection if so**

**“Good night, good night. Parting
is such sweet sorrow.” Romeo
and Juliet**