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Deposition objections california cheat sheet

Objections to deposition questions. List of deposition objections california. Objections to deposition. Objections to deposition california.

Tuesday, February 23, 2021 A deposition is a powerful litigation tool for several reasons.

RULES OF EVIDENCE CHEAT SHEET
(Please refer to "Simplified Rules of Evidence" section for the complete rule)

Rules 402 and 403 – RELEVANT EVIDENCE is generally admissible unless it is unfairly prejudicial, may confuse the issue, or waste the court's time.

Rule 404 – CHARACTER EVIDENCE is generally not admissible to prove conduct, except:

- Character of Accused offered by Accused (State may rebut)
- Character of Victim offered by Accused (State may rebut), or peacefulness of victim offered by State to rebut self-defense.
- Character of Witness, as provided in Rules 607-609.
- Other crimes, wrongs or acts are not admissible to prove action in conformity with character but are admissible for other purposes.

Rule 405 - If character admissible, OPINION AND GENERAL REPUTATION are admissible. Specific conduct only admissible during direct examination when character is an essential element. Otherwise, only during cross-examination.

Rule 406 — HABIT OR ROUTINE is admissible to prove action in conformity therewith.

Rule 407 – SUBSEQUENT REMEDIAL MEASURES are not admissible to prove liability but may be admissible to show ownership, control, feasibility of precautionary measures (if controverted), or for impeachment.

Rule 408 – Evidence of COMPROMISE OR OFFERS TO COMPROMISE are not admissible to prove liability, invalidity of claim, or value of claim. May be admissible for other purposes.

Rule 409 – PAYMENT OF MEDICAL OR SIMILAR EXPENSES is not admissible to prove liability.

Rule 410 – Withdrawn GUILTY PLEAS, *nolo* pleas, statements made in federal Rule 11, or similar, proceedings, and plea discussions that don't result in guilty plea (or plea is withdrawn), are not admissible. Plea discussion statements are admissible if another such statement has been admitted and the statement ought to be considered with it, or in a criminal perjury proceeding.

Rule 501- PRIVILEGES include: spouses, attorney/client, grand jurors, state secrets, and psychiatrist/patient.

Rule 601 – Everyone is COMPETENT to be a witness.

Because a deposition is sworn testimony, it can be used to prove perjury if a witness tries to change his or her testimony at trial. A deposition can also be used to discover additional evidence to use at trial or discover information that can lead to admissible evidence. There's a ton to keep in mind when it comes to depositions, so here's our list of proper deposition objections. Objections You Can Make in a Deposition Even though the same rules do not apply to depositions as to testimony given during a hearing or during a trial, attorneys can and do object to some questions during a deposition. Learning the difference between objections that can be made during a deposition and objections that are improper in a deposition is essential if an attorney wants to protect his or her client and/or witness during a deposition.

[illegible]

Any of the objections that apply in court do not apply in a deposition; however, some objections are acceptable in a deposition. Asked & Answered Objections - If the attorney for the opposing party continues to ask questions that are simply reworded, the attorney may be attempting to get the witness to contradict a previous statement. Asked and answered objections are proper in a trial and in a deposition. Harassment of the Witness - If your witness is being attacked or harassed, you have the right to object regardless of whether you are in a hearing or in a deposition. If the behavior continues, you have the right to end the deposition. Privilege - If privilege is raised, instruct your client not to answer any questions that provide privileged information. End the deposition if opposing counsel persists in this line of questioning. It is important to raise the issue of privilege because you waive the right to privilege if it is not raised as soon as a question is asked. Privilege objections apply to any form of privilege such as physician-patient and attorney-client. Form of the Question Objections - If you do not make this objection during the deposition, it is considered waived. You can object to questions that are compound or questions that call for speculation. Compound questions can be a problem because if the deponent answers "no," which part of the question does the answer apply to or does it apply to the entire question. An attorney should object to any question that calls for speculation. Calls for a Legal Conclusion - Only a witness who is an attorney can make a legal conclusion and this may be a gray area if the question is about an area of the law that the attorney does not practice. Typically, a witness should not be required to make a legal conclusion even in a deposition. Objections Not Permitted in a Deposition The following objections may be valid in a courtroom but they are not valid in a deposition.



Hearsay Objections - Hearsay in a trial is inadmissible because the opposing counsel cannot cross-examine the declarant. In a deposition, much of the information may be in the form of hearsay. The attorney is searching for information that may lead to admissible evidence through the deposition or testimony of the source of the information. Objections Related to Opinions - In a trial, the attorney must lay a foundation that the witness is an expert if the attorney wants the witness's opinion to be admissible. However, this is not the case in a deposition. The attorney can ask for an opinion and ask the witness to explain how he or she arrived at this opinion. This line of questioning is often used to obtain additional information that can lead to admissible evidence. Assumes facts not in evidence - Again, a deposition is not a trial. A witness can answer a question such as "If you knew 'this,' would it have changed what you did or how you reacted?" However, if the answer requires the witness to speculate, the attorney should object to the question. This type of objection borders on a gray area. Possible Gray Areas In some situations, an objection may be proper but in other situations the same exception may not be proper. Experience is often the best teacher an attorney can have to learn when and when not to make objections during a deposition that are related to gray areas. Irrelevant - In court, the judge decides what is relevant and irrelevant when this objection is made. In a deposition, there is no one to make this decision. An objection for irrelevance is only acceptable if the question is clearly way off-topic. In the case where the answer may lead to admissible evidence, irrelevant objections are not proper in depositions. Confusing Questions - While it may not be proper to ask for clarification, a question may be confusing to the point that the deponent cannot understand what is being asked.

HEARSAY	RELEVANCE	403
LEADING	IMPROPER CHARACTER	COMPOUND
CUMULATIVE (ASKED AND ANSWERED)	NARRATIVE	NONRESPONSIVE
SPECULATION	IMPROPER OPINION	MISCHARACTERIZE TESTIMONY
COUNSEL TESTIFYING	VAGUE	BEST EVIDENCE
IMPROPER ARGUMENT	ARGUMENTATIVE	ASSUMES FACTS NOT IN EVIDENCE
IMPROPER VOIR DIRE: IMPROPER COMMITMENT	IMPROPER VOIR DIRE: GOING INTO THE FACTS OF THE CASE	IMPROPER VOIR DIRE: ARGUMENT
IMPROPER VOIR DIRE: EXPERT OPINION	SIDE BAR	READING FROM A DOCUMENT NOT IN EVIDENCE

If the deponent cannot answer the question because it is too confusing to understand, an objection may be proper. Preparing Your Client For a Deposition Preparing your client for a deposition is essential. Explaining to them this list of proper deposition objections is a good place to start. Most importantly, you need to explain to your client that information in a deposition may not be admissible in court but the attorney is looking for information that may lead to admissible evidence. Because of this fact, your client may not appreciate some of the questions being asked and your client may not understand why you do not object to some of the questions. To prepare your client, tell your client: Do not get emotional, upset, or let your body language give away information. Do not guess or speculate. Say "I don't know" if you truly do not know. If you do not understand a question, ask the attorney to rephrase the question. Keep answers simple and only answer the question that is asked. Never volunteer information. Do not ask your attorney for help.

Objections is a list generated by Susan Minns in her article "Proper Deposition Objections," 1. Hearsay, you file it to object to a question or hearsay during a trial. OBJECTIONS TO DEPOSITION QUESTIONS. Objections to the form of questions are waived if not raised at the deposition. Well and Brown, and Brown, Guide: Civil Procedure Before Trial (TRG 2010) ¶8,721 (citing C.C.P. §2025.460 (pdf)). Deposition Objection- A party must "promptly" object at least 3 calendar days (+5 for mail) before the date of the deposition. [CCP 2025.401(a)]. When responding to or conducting discovery, there are a few common objections you might raise, or you might encounter. Irrelevant You may object if the request is not likely to get relevant evidence. DO: Know your objections. Not all objections are appropriate at a deposition. The following objections are among those that are: Privilege (i.e., attorney-client, physician-patient, privacy, Fifth Amendment, etc.) or work product; Relevance; Defective deposition notice; Defects in the oath or affirmation administered; While the authorities cited are to Federal and California law, these objections apply to most jurisdictions and can also be used to object to deposition notices. Categories of Discovery Objections Start your objections with the phrase: "Plaintiff/Defendant objects to this request/interrogatory on the ground that . . . All rights reserved. Unauthorized reproduction, in whole or in part is strictly prohibited.