



PROGRAM MATERIALS

Program #3682

April 10, 2026

Depositions: Say that again?

Copyright ©2026 by

- **Michael J. Needleman, Esq. - Reger Rizzo & Darnall
LLP**

**All Rights Reserved.
Licensed to Celesq®, Inc.**

Celesq® AttorneysEd Center
www.celesq.com

**5301 North Federal Highway, Suite 150, Boca Raton, FL 33487
Phone 561-241-1919**

Depositions: Say that Again?

(Or at least pretending like you have depositions mastered)

A guide to effective preparation

Michael J Needleman

A large yellow triangle is positioned in the bottom right corner of the slide, pointing towards the top right.

Why is this deposition being taken

First: are you the proponent or opponent of the deposition?

Second, is the deposition being taken so you can attach the transcript to a motion (“what? Can you repeat that, please?”)

Third, is the deposition being taken for trial preparation

Fourth, Is the deposition being taken for both those things?

Finally, is there some other reason the deposition is being taken?

- Diversity jurisdiction or some other discrete question

Who is being deposed

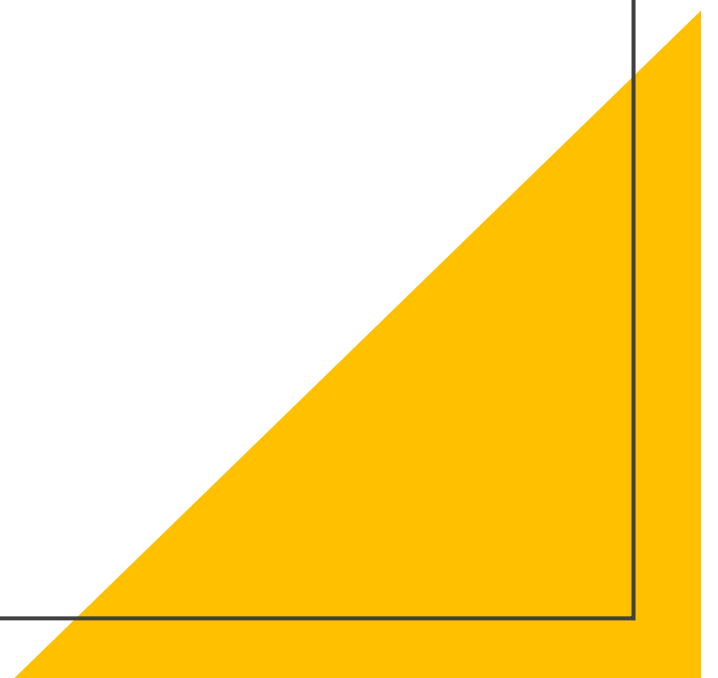
- Party – deposition by notice
- Non-Party fact witness – deposition by subpoena *ad nauseum*?
 - Be mindful that there is a witness fee (the amount varies by court)
- Expert – notice but you may want to subpoena the file first
 - Why subpoena? You might not get the drafts in response to RfP
 - Also, be mindful of the rules surrounding reimbursement and who pays for the expert's time

Rule 30 (or state equivalent) Depositions

- Since there are no questions about this, we can just move right along...Just Kidding!
 - Depositions are limited to one day or 7 hours (unless good cause exists)
 - Cannot depose the same party/witness twice (unless really good cause exists or your case is in DC Superior Court)
 - Meet and confer requirement (ostensibly to narrow issues and figure out if deposition is really necessary) but it's really honored more in the breach now
- 30(b)(6)...hike!
 - What is a 30(b)(6) deposition? It is a deposition of an entity/organization designee who is authorized to testify on its behalf

Cont'd

- Attorney Client Privilege?
- Functional equivalent



Get your documents together

- This is mission critical if the deposition is remote and mission critical is the deposition is in person
- All the papers (?) that have the name of the person on them exchanged during discovery
- If the person being deposed was identified by another witness, have the transcript at hand
 - “SH-T DOG”
- Check civil and criminal docket: although the conviction itself may not be admissible, the witness’s credibility ALWAYS is. Confront the witness with the prior lawsuit if necessary
 - *Crimen falsi* is not a valid objection at a deposition; if the opposing attorney instructs the witness not to answer, then cross examine with the docket/lawsuit.
 - This applies to expert witnesses as well (if the expert is a doctor, find out if ever sued for malpractice or sued for loss of income!)

Cont'd

- If using Bates-stamped documents, identify on the record the Bates number(s) of the document(s) that make up the exhibit
- Also, be cognizant of exhibits. It's not a violation of anything to use the same document as a different exhibit in two different depositions, but at trial, it's just a mess.
 - Better to use Christian Bale-3 at the deposition of Tom Hardy than to use Christian Bale-3 and Tom Hardy-2.

Instructions

- Do these at the beginning for every witness, every time. Even if the witness says I have done 102,000 depositions over the course of 4 days, this witness has never testified for *you* before. Do not give the witness the opportunity to say he/she/they did not understand any of your questions.
 - Do you understand the oath you just took?
 - If you don't understand the question, please tell me
 - Estimation or approximation is ok; do not guess
 - Within the last 24 hours, have you taken medication? What medication do you usually take?

Taking a deposition

- Do an outline, or write out your questions, or do whatever is most comfortable
 - Play Jazz! Listen to the response, and adjust if you need to



This is your deposition

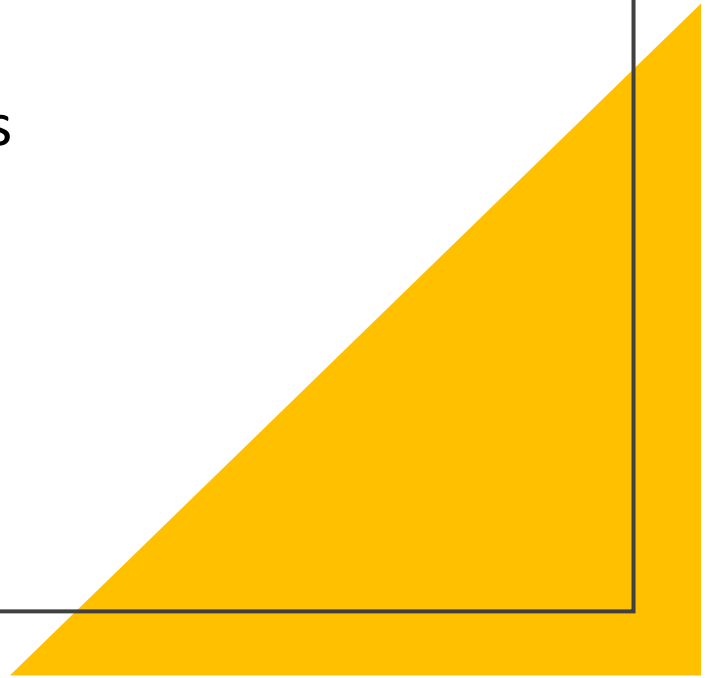
- Ask the questions you want (within reason) and how you want (also within reason)
 - Must have a good faith basis to ask the question, and questions cannot be posed just to harass (“when did you stop committing war crimes?”) but those are the only real limitation
 - Ask only one question at a time: this is time-consuming and childish, but have you tried a case lately?
 - Please, Please, Please: Listen to the answer, ask your follow ups, then go back to your outline
- Objections
 - Must be “to form” only, at which point the witness can be instructed to answer the question
 - If the objection isn’t really material, note it and make sure the witness answers the question
 - An instruction not to answer the question may only be based on a recognized privilege:
 - Religious/confessional
 - Marital communication
 - Attorney client
 - Doctor patient

Defending a deposition

- Pay close attention to what is being asked
 - Object and ask for clarification
 - Object and ask which question you want answered
 - Object if you are looking to throw off interrogator
 - Watch question: be cognizant that most people “fill in”
- If deposition notice came with a list/identification of areas of inquiry, have witness review it prior to the deposition

Should you record the deposition?

- Transcript
- Does the courtroom have capacity to playback?
 - All federal courts have the capacity but not all judges allow in their courtroom
 - Check the policies and procedures!
- Is it cost-effective?
- Is it a good idea?



Thanks and Questions

- Michael J Needleman

Reger Rizzo Darnall LLP

2929 Arch Street 13th Floor

215 495 6513

mneedleman@regerlaw.com

