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WHAT IS DEPOSITION IN CA?

What is a deposition? Who may be deposed? Who may not be deposed? What is the time frame for deposition? Where could deposition be taken? These are only some of the questions confronting parties and non-parties alike in a deposition.

1. DEFINITION OF DEPOSITION

Deposition is referred to oral questioning of a party OR a non-party witness under oath before a deposition officer. The fruit of deposition in the form of a sworn written testimony can be used during trial or other purposes as admissible evidence.

A. DEPOSITION OF PARTY AND NON-PARTY

To compel a party at a deposition testimony, a proper deposition notice is sufficient. On the other hand, for a non-party, there must be a deposition subpoena.

B. DEPOSITION WITH DOCUMENTS

Legal counsel could request documents from a party or a non-party. To request documents from a party, the items requested should be specified in the deposition notice served on the party. On the other hand, to request documents from a non-party the requested documents should be specified in the subpoena notice being served on the non-party. Then, when the party or non-party appears at oral deposition with the requested documents and testifies, such documents are attached to the deposition transcript as exhibits.



2. WHOM TO DEPOSE

Interestingly, a party to an action can theoretically depose any person, party or non-party. Even, a party might subject oneself to deposition to retain testimony in the event the party becomes unavailable.

Note: Deposition is the only available discovery method for testimony of non-parties.

3. WHEN IS THE EARLIEST TIME TO DEPOSE

A. PLAINTIFF

Plaintiff must wait at least 20 days after the service of summons or appearance in the action by Defendant to serve notice of deposition on defendant.

b. DEFENDANT

In some rare cases, it might be advantageous for the Defendant to serve Plaintiff with notice of deposition, even before Plaintiff's 20 days are up. Nonetheless, from the practical point of view the Defendant's counsel might not have enough information about the case to prepare for deposition. In most cases, interrogatories (written questions to be answered under oath by party) precede depositions.

4. WHERE TO TAKE DEPOSITIONS

Generally, the deposition is taken at the offices of the noticing attorney. However, it is helpful to avoid frivolous litigation, to accommodate the other party, especially if the amount of documents to be produced is voluminous.

The noticing party statutorily can:

- Have the deposition of a natural person within 75 miles of the deponent's (person being deposed) resident; or
- Have the deposition of a natural person within the county where the deposition is pending AND within 150 miles of the deponent's residence.



5. WHAT ARE THE BENEFITS OF DEPOSITION FOR NOTICING PARTY

The following showcase some of the benefits of deposition to the noticing party, i.e. the party taking the deposition:

- The noticing party could in deposition explore evidence that might be inadmissible at trial, such as hearsay. Through such evidence, the noticing party might ascertain some facts which lead to obtaining information from other parties or non-parties alike through deposition or some other discovery methods.
- The noticing party could in deposition disarm the opposing counsel. Not only the opposing counsel cannot re-craft and re-word every response, unlike interrogatories, even the most prepared deponents make mistakes.
- The noticing party could in deposition strive to commit the deponent to particular version of the events or elicit admissions. Such invaluable evidence could prove indispensable for a motion for summary judgment or even trial.
- The noticing party could in deposition learn a lot about demeanor, credibility and eloquence of deponent. Such information, if taken early on in the case, could be instrumental to ascertain if a settlement could be reached and whether a settlement is advantageous to a protracted legal battle.

SALIENT NOTE

This article NEITHER supplants NOR supplements the breadth or depth of such rarefied topic. In fact, this article ONLY provides a rudimentary synopsis of such esoteric subject matter.

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