Grounds for Objections at Depositions

By Niki Okcu

There are numerous grounds for objecting at depositions. Attorneys have an obligation to be familiar with these rules in order to effectively represent their clients. Furthermore, failure to raise an objection at a deposition can sometimes result in waiver of that objection, and a waived objection may result in the admission of damaging testimony into evidence at a later point in the case, including at trial.

The following is a list of the most common types of objections utilized at depositions, and some helpful tips for knowing when to object.

Objection to the form of a question

A question is typically objectionable as to form when it seeks information in an improper or confusing manner. Objections to the form of a question are typically waived unless they are raised at the time of the deposition. (Code Civ. Proc. § 2025.460(b).) While not exhaustive, the following is a list of the most commonly used objections as to form[1] and what they mean.

1. **Vague and ambiguous.** The question is unclear or confusing.
2. **Compound.** The question is actually two or more questions combined into one.
3. **Argumentative.** The question is being used to argue with the deponent.
4. **Assumes fact not in evidence.** The question contains a factual statement that has not yet been established in the deposition.
5. **Calls for narrative.** The question calls for a narration and/or a lengthy and sweeping explanation.
6. **Calls for speculation.** The questions seeks information that is beyond the deponent's personal knowledge.
7. **Misstates evidence or testimony.** The question contains a factual statement for which there is no evidence in the case, or the question incorrectly quotes or paraphrases what the deponent testified to in the deposition.
8. **Calls for a legal contention.** The question asks deponent for legal contentions or documents or evidence in support of such contentions. (See *Rifkind v. Superior Court* (1994) 22 Cal.App.4th 1255, 1259.)
9. **Harassing.** The question is directed to cause unwarranted annoyance or embarrassment to the witness. (See Code Civ. Proc. § 2023.010(c).)
10. **Leading.** The question suggests an answer. This objection should only be used when an attorney asks questions that suggests an answer to their own client or witness. (See Evid. Code §§ 767, 776.)
11. **Asked and answered.** The same question has already been asked and answered by the witness in the deposition.
12. **Incomplete or improper hypothetical.** The question is based on a hypothetical which is inconsistent with the facts of the case or there is insufficient information upon which the deponent can form a response.

Objections based on privilege

When a deposition question calls for the disclosure of information protected by a privilege or the work product doctrine, it is, of course, objectionable on that ground. Failure to make a timely objection waives the evidentiary privilege or work product protection. (Code Civ. Proc. § 2025.460(a); *International Ins. Co. v. Montrose Chemical Corp.* (1991) 231 Cal.App.3d 1367, 1373 n.4.) The statement of an objection on its own is not enough to preserve a privilege or the work product protection; rather, an attorney must instruct the deponent not to answer the question in order to preserve the privilege. (Code Civ. Proc. § 2025.460(a).)

Although the California Evidence Code enunciates a number of privileges, the most common privileges are the attorney client privilege (Evid. Code §§ 950-962); work-product privilege (Code Civ. Proc. § 2018.010 et seq.); physician-patient privilege (Evid. Code §§ 994-1007); psychotherapist-patient privilege (Evid. Code §§ 1010-1027); spousal privilege (Evid. Code §§ 970-973, 980-981); and the privilege against self incrimination (5th Amendment to the U.S. Constitution; Evid. Code § 940).

Objections based on right to privacy

When a question calls for information protected by the deponent's right to privacy, such as medical or financial information, the question is objectionable. (See, e.g., *Britt v. Superior Court* (1978) 20 Cal.3d 844, 862-864.)

An attorney's failure to object to questions that invade the right to privacy does

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not automatically waive that objection, particularly if the privacy rights of third parties are involved. (*Boler v. Superior Court* (1987) 201 Cal.App.3d 467, 472; *Mendez v. Superior Court* (1988) 206 Cal.App.3d 557.) However, you should not take a chance, and should instruct the deponent not to answer in order to preserve the privacy right.

Objections to a non-responsive answer

If a deponent's answer is non-responsive, an attorney must make a "non-responsive" objection immediately thereafter and move to strike; failure to do so waives the right to have the testimony stricken at trial. (Code Civ. Proc. § 2025.460(b); see also *Kirshchner v. Boradhead* (7th Cir. 1981) 671 F.2d 1034, 1037-1038.)

Objections based on admissibility, competency and relevancy

Objections to the competency of the deponent or to the relevancy, materiality or admissibility at trial of the testimony or of the materials produced are not necessary. These objections are not waived by failure to make them before or during the deposition. (Code Civ. Proc. § 2025.460(c).) Unless the line of questioning is so outside the bounds of relevancy that a motion to limit the examination is in order, relevance objections should not be made during deposition and "should be held in abeyance until an attempt is made to use the testimony at trial." (*Stewart v. Colonial Agency, Inc.* (2001) 87 Cal.App.4th 1006, 1014.)

Objections based on errors or irregularities (other than those dealing with defects as to the form of a question)

In addition to objections as to the form of a question and answer, Code of Civil Procedure section 2025.460 allows objections as to other errors or irregularities relating to the manner of taking the deposition. Examples of such errors and irregularities include those relating to the defects in the deposition notice, defects in the oath or affirmation administered, and the conduct of a party, attorney, deponent, or deposition officer, such as abusive questioning. These objections must be made prior to or during the deposition or they are waived. **(**Code Civ. Proc. § 2025.460(b); see also *id* § 2025.410.)

Form of objections

In order to preserve any ground for objection, the ground for objection must be specifically stated. "[I]t is not enough to simply state, 'I object.'" (Weil & Brown, *California Civil Procedure Before Trial* (TRG 2009) ¶ 8:731; see also Evid. Code § 353; Code Civ. Proc. § 2025.460(b).)

Instructing witness not to answer

Typically, the only basis for instructing a witness not to answer is privilege or the right to privacy. (*Stewart v. Colonial Agency, Inc., supra,* 87 Cal.App.4th at p. 1015.) In *Stewart*, the court affirmed this principal and sanctioned an attorney who instructed his client not to answer on relevance grounds.

The only other instance when it is appropriate to instruct a witness not to answer is when the deposition reaches a point "where the examination is being conducted in a manner that unreasonably annoys, embarrasses, or oppresses" the deponent and where suspension is warranted. (Code Civ. Proc. § 2025.470; see also *Stewart v. Colonial Agency, Inc., supra,* 87 Cal. App.4th at p. 1015.)

Concluding thoughts

Objections play an important role in depositions because they serve a gate-keeping function for admission of evidence. Attorneys should review and be familiar with the applicable procedural rules governing objections prior to a deposition in order to effectively represent their clients' interests. ■

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[1] See also *Chavez v. Zapata Ocean Resources, Inc.* (1984) 155 Cal.App.3d 115, 124 ("Questions subject to objection as to form include leading questions (subject to exceptions such as cross-examination, examination of an adverse witness, preliminary matters and expert witnesses) and argumentative, repetitive, uncertain or unintelligible, omnibus or compound questions and those assuming facts not in evidence [citations].")