

Depositions

"The Rule of Threes"

Frank Lynch

There are 3 purposes for a discovery deposition

1. Evaluate the appearance and demeanor of a witness
2. Investigate, discovery and disclose facts and evidence
3. Commit the deponent to a specific version of events.

There are 3 subjects to be addressed in a deposition -

- A. Before the accident
- B. The accident
- C. After the accident

There are 3 tasks to be accomplished -

- I. Ask meaningful questions
- II. Get direct answers
- III. Make a record

1. Evaluate Witness

All levels: deep and shallow
Credibility
Bias
Interest
Basis of knowledge; opportunity to observe
Get an answer to your question

2. Discover Facts

Probe All issues
Rule 213(g)
Is the witness a sleeping giant?
Is Defendant's electrician your
electrocution expert or artist?
Rule 201(b)(1): any matter relevant
What is out there you don't know about?

- Force a duty to supplement
- Identify or eliminate trial evidence
- Listen to answers
- Listen to non-answers
- Listen to objections
- Get an answer to your questions

- 3. Commit the deponent
 - Clarify and repeat
 - Make sure the question is understandable
 - Make sure the record is useable
 - Get sound bites
 - Get an answer to your question

- A. Before the accident
 - Damages
 - Pre-existing conditions
 - Loss of a normal life
 - Opportunity to observe
 - Do they know anything about your client?
 - Credibility issues
 - Prior treatment
 - Get an answer to the question

- B. The Accident
 - Time
 - Distance
 - Space
 - Events
 - Medical history recorded later
 - Subsequent statements or admissions
 - Impact
 - The Peyton Manning Rule = Read and React
 - Get an answer to the question

- C. After the accident
 - Damages
 - Actions
 - Statements
 - Treatment
 - Get an answer to the question

- I. Ask meaningful questions
 - Probe
 - All issues
 - Disclose or eliminate

II. Get direct answers

Get an answer to your question

III. Make a record

Can you effectively use your deposition in future
discovery or in trial?

The Final Rule

____ _

____ _

____ _