

MULTNOMAH COUNTY DEPOSITION GUIDELINES

presented by the Multnomah Bar Association Court Liaison Committee.

The attorneys and judges of Multnomah county have asked for clarification of local deposition practice. These guidelines are the result of a collaboration between the bench and bar, and are designed to provide uniformity and thereby reduce disputes during discovery depositions. No attempt is made to cover every potential area of dispute; instead the intent is to cover the majority of avoidable problems arising during discovery depositions.

SCOPE OF DEPOSITION. ORCP 36B(1) provides that any matter not privileged may be inquired into during deposition if reasonably calculated to lead to admissible evidence. If unreasonable or bad faith deposition techniques are being used, the deposition may be suspended briefly, and a motion to limit pursuant to ORCP 39E may be made and heard by an available judge.

OBJECTIONS. ORCP 39(d) creates a mechanism so that the attorney whose question is objected to may accept the objection as an invitation to correct an alleged defect in the question; rejection of the invitation may result in exclusion of the question and answer at trial. Attorneys should not state anything more than the legal grounds for the objection to preserve the record, and objection should be made without comment to avoid contamination of the answers of the witness. Argument in response to the objection is neither necessary nor desirable.

INSTRUCTIONS NOT TO ANSWER. The only basis for an instruction not to answer a question reasonably calculated to lead to the discovery of admissible evidence is in response to an attempt by the attorney taking the deposition to inquire into an area of privacy right, privilege, an area protected by the constitution, statute, work product, or questioning amounting to harassment of the witness. Any other objection to inquiry, such as lack of foundation, competence, asked and answered, etc., can be preserved with recitation of a brief objection.

DEPOSITION DISPUTES. If the parties have a problem which may be solved by assistance from the court, they should briefly suspend the deposition and contact the Presiding Court for hearing on the record by phone or at the courthouse. Presiding Court will provide names of judges and will give preference to judges who have previously heard matters in the case or judges on the Multnomah County Motion Panel.

PENDING QUESTIONS. If a break in questioning is requested, it shall be allowed so long as a question is not pending. If a question is pending, it shall be answered before a break is taken, unless the question involves a matter of privacy right, privilege or an area protected by the constitution, statute or work product.

PERSONS PRESENT. Any party may attend a deposition. Non-party witnesses are excluded at the request of any party. Parties and non-witnesses may be excluded by the court upon hearing, or if they disrupt the proceedings.

Approved, MBA Board of Directors, September 1992.
Revised December 1992