



**THE DEPOSITION IS OVER,  
NOW WHAT?**



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## INTRODUCTION

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Experienced litigators know that a few moments of reflection and planning at the end of a deposition pay big dividends down the road. The deposition's conclusion is the time to tie up loose ends with opposing counsel, reaffirm any stipulations that might have been made, ensure that the court reporter is properly instructed, and create a post-deposition to-do list that keeps the momentum of the case moving forward.



It's difficult to overestimate the power of having everyone together, in the same place, at the same time. Misunderstandings and missed opportunities that might take dozens of emails and phone calls over several weeks to iron out can be quickly cleared up in the moments that follow the deposition's end. Impressions of the deponent's testimony are fresh, and everyone involved in the deposition is present – either online or in the deposition room.

Litigators should carefully weigh the following considerations before wrapping up their next deposition.



## DECIDE WHETHER TO TERMINATE THE DEPOSITION OR SUSPEND IT UNTIL ANOTHER DAY

Do not allow yourself to feel rushed when you arrive at the last line of questioning in your outline. Remind yourself of the strategic purpose of the deposition and ask whether that purpose has been achieved. Additional questioning may be necessary; if so, fire away.

Depositions can be “terminated” or “suspended” for another day. The choice you make at the conclusion of the deposition will determine whether further testimony can be obtained from the deponent. Trial courts are generally reluctant to permit multiple discovery depositions of the same witness, so it’s important to make clear on the record that the deposition will be continued at a later date. Choose your words wisely.

In *Goins v. County of Merced*, No. 1:13-cv-01245-DAD-SKO (E.D. Cal. Dec. 22, 2015), the trial court ruled that an attorney’s statement “I don’t have any other questions at this point” was insufficient to alert opposing counsel that the deposition was to remain open and continue on another day.

## PRESERVE THE RIGHT TO FILE AN ERRATA SHEET

Court rules in all jurisdictions give deponents the right to read and sign a transcript of their testimony. If you are the attorney defending the deposition, ask yourself whether or not the deponent should invoke this right. Similarly, deponents have the

right to file an [errata sheet](#) that can revise both the form and the substance of their testimony.

Court rules vary on the procedure for invoking these rights. In the federal courts, the deponent must assert the right to “read and sign” the deposition prior to the conclusion of the deposition session.

The extent to which deposition testimony can be revised via an errata sheet varies — sometimes significantly — according to court rules. There are also time deadlines. Federal Rule of Civil Procedure 30(e) gives deponents 30 days from the date they receive notice that the transcript is ready in which to file an errata sheet. This rule has teeth: *In Hambleton Bros. Lumber v. Balkin Enterprises*, 397 F.3d 1217 (2005), the Ninth Circuit held that a late-filed errata sheet was properly rejected by the trial court.

## MAKE SURE THAT ALL EXHIBITS ARE IN THE COURT REPORTER’S POSSESSION

Original versions of exhibits offered during a deposition are typically retained either by the court reporter or attached to the transcript. You will want to note carefully who has possession of every document and exhibit used during the deposition.

Depositions may sometimes conclude with numerous exhibits scattered on a conference table or placed elsewhere in the deposition room. The court reporter — and perhaps your client — will appreciate it if you take a moment to make sure the court reporter has accounted for all exhibits.





## ORDER THE WRITTEN TRANSCRIPT OR VIDEO RECORDING

Be sure to order the transcript from the court reporter, if necessary, and review with the court reporter any prior understandings regarding due dates and deliverables.

You should make the court reporter aware of critical calendar dates: brief deadlines, trial dates, or any out-of-the-ordinary delivery requirements. It's easier to address these concerns at the deposition's end than to scramble as deadlines approach.

In the case of a video deposition, a similar conversation should take place immediately after the deposition concludes. You also should inform the legal videographer of any unique needs. For example, you may want the video to be subtitled or filed in a particular video-recording format. Discuss with the legal videographer the extent to which the video can be edited (if at all).

## FOLLOW UP ON EVIDENCE MENTIONED BUT NOT PRODUCED

It is not uncommon for deponents to mention documents or exhibits that were not produced during the deposition. While your memory is fresh, take note of in-deposition mentions of documents that were not produced.

If you requested the deponent to produce these materials, you will want to note the materials you are seeking, in detail, so that you can send a formal request for them soon after returning to the office.

## IMMEDIATELY CAPTURE IMPRESSIONS OF THE DEPONENT'S TESTIMONY

Memories fade with time. The conclusion of the deposition is the best time to record what was learned from the deponent. Often these first impressions will include fresh insights on trial strategy, insights on the potential for filing dispositive motions based on the deposition, and determinations on additional witnesses that should be deposed.

Also, many clients insist on a detailed deposition report following each deposition. The moments immediately following the deposition are fertile soil for producing comprehensive, insightful reports to the client.

## SUMMING UP

To review the post-deposition considerations:

1. Decide whether you want additional testimony from this witness.
2. Preserve your right to file an errata sheet.
3. Make sure the court reporter has all exhibits.
4. Order the written transcript or video recording.
5. Follow up on evidence discussed but not produced.
6. Immediately capture first impressions of the deposition.

If at all possible, don't leave the deposition location without attending to these small but crucial administrative chores. Litigators who invest a small amount of post-deposition time tying up loose ends will be rewarded with fewer headaches, happier clients, and better outcomes every time.

## **ADDITIONAL READING:**

- [Who Can Attend A Remote Deposition?](#)
- [Taming The Fears of First-Time Deposition Witnesses](#)
- [Are Lawyers to Blame for a Client's Boorish Deposition Behavior?](#)
- [Before You Press "Record" on a Zoom Deposition](#)
- [7 Keys To A Perfect Deposition Transcript \(eBook\)](#)
- [16 Tips To Nail Your Next Remote Deposition Or Hearing](#)
- [Court Reporting's Alphabet Soup: What Do Those Letters Mean?](#)
- [When Deposition Advocacy Becomes Unethical](#)
- [A First-Timer's Guide to Deposition Interpreters \(eBook\)](#)
- [Making the Record](#)
- [Elements of a Strong Deposition Protocol](#)
- [Technology Tips From Virtual Trial Experts](#)

