FILED
MAY - 9 2022
CLERK OF COURT

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

ADMINISTRATIVE ORDER REGARDING DEPOSITION BEHAVIOR	Administrative Order: 22-08

This Administrative Order Regarding Deposition Behavior ("Order") applies to all civil and family division actions filed in the Eighth Judicial District Court ("the Court" or "this District") for which discovery disputes are heard by a discovery commissioner or discovery hearing master. The Court enters this Order in furtherance of its duty to "secure the just, speedy, and inexpensive determination of every action and proceeding."[1]

All counsel intending to participate in depositions, and witnesses expecting to testify at trial, must comply with this Order. Counsel must behave professionally at all times during depositions; they must treat parties, other counsel, court reporters, videographers, interpreters, and others involved in any aspect of a deposition with civility and respect.[2]

I. SCHEDULING

Counsel must cooperate with each other, demonstrating civility and respect when scheduling a deposition. In fact, it is counsel's ethical duty to do so.[3] Counsel must make reasonable efforts to ascertain and accommodate the availability of the witnesses and all counsel both before and after noticing the deposition. If the date proposed in a deposition notice is problematic for counsel or the witness, any person with a scheduling conflict must promptly propose several reasonable alternative dates. Failure by counsel and/or a witness to promptly and reasonably advise noticing counsel of their availability or to provide alternative dates acts as a waiver of their right to object to the date set by deposing counsel. Likewise, all counsel must reasonably cooperate with a witness or opposing counsel who may need to postpone a deposition for personal or professional reasons after an original date is set unless doing so would adversely affect a party's rights.

II. EXAMINATION OF THE WITNESS BY COUNSEL

A. Examination Should Proceed as if at Trial

NRCP 30(c)(1)'s requirement that the "examination and cross-examination of a deponent proceed as they would at trial" shall serve as a reminder to all counsel to behave at a deposition as if they were in the presence of a judicial officer or under the watchful eyes of a jury.[4] Like all discovery rules, Rule 30 is intended to be self-executing—that is, counsel are bound by operation of the Rule "to depose witnesses 'as they would at trial' without judicial assistance, oversight, or intervention," and are "expected to police their own behavior and examination tactics during depositions."[5]

B. Duration and Location of Examination

Absent an agreement or order, depositions must take place on weekdays during normal business hours. While the presumptive durational limit of "1 day of 7 hours of testimony" applies to depositions in this District, the "'7 hours of testimony' specified in Rule 30(d)(1) means 7 hours [of time] on the record. The time taken for convenience breaks, recess for a meal, or an adjournment under Rule 30(d)(3) does not count as deposition time."[6]

Counsel must cooperate regarding the allocation of examination time between attorneys, especially where the case involves multiple parties or the deposition is of a third party. Further, "[p]reoccupation with [the amount of] tim[e] [examining a witness on the record] is to be avoided."[7] Counsel shall reasonably cooperate to extend the duration of a deposition where the complexity or breadth of the matters on which the witness is examined, the number of parties, or fairness requires.

Normally, a deposition will take place in person. The parties may stipulate, and the Court may order for good cause shown, that a deposition "be taken by telephone or other [including video] remote means." [8] Examining counsel may generally set the deposition for an appropriate location of their choosing subject to the Court's power to grant a protective order.[9]

Generally, a plaintiff's deposition may be taken in this District; a defendant's deposition may be taken where the defendant resides or, in the case of a corporate defendant's Rule 30(b)(6) designee, where the corporation has its principal place of business.[10] A defendant who is also a counterclaimant will be treated the same as a plaintiff for purposes of deciding the location of defendant/counterclaimant's deposition. Nevertheless, a witness should not have to travel for a deposition absent good cause.[11] The Nevada Supreme Court in *Okada v. Eighth Jud. Dist. Ct.* held that courts must consider "cost, convenience[,] and litigation efficiency," as well as the following five factors when determining whether good cause exists to protect a deponent from having to testify in the location noticed by another party:

> (1) the location of counsel for the parties in the forum district; (2) the number of corporate representatives a party is seeking to depose; (3) the likelihood of significant discovery disputes arising, which would necessitate resolution by the forum court; (4) whether the persons sought to be deposed often engage in travel for business purposes; and (5) the equities with regard to the nature of the claim and the parties' relationship.[12]

C. Limitations on the Examination

Counsel may generally seek testimony on "any nonprivileged matter that is relevant to any party's claims or defenses and proportional to the needs of the case."[13] Counsel may not conduct a deposition "in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent"[14] or in a way that "impedes, delays, or frustrates the fair examination of the deponent."[15]

Counsel shall refrain from overly aggressive, repetitive, or argumentative questions or those asked for the purpose of intimidating a witness. Counsel may not purposefully mislead the witness or attempt to trick the witness, including by mischaracterizing prior testimony. Such behavior is not permitted in the presence of a judicial officer and is likewise not permitted during a deposition. Further, the examiner must not interrupt a witness who is answering a question. A witness, or counsel representing the witness, may insist the witness be allowed to complete an answer before fielding another question.

D. Treatment of Documents

Examining counsel shall provide all counsel/self-represented parties with a copy of all documents shown to the deponent. During a deposition taken remotely or by audio/visual means, the examiner must contemporaneously provide all participants with electronic copies of any document used at the deposition. Further, the examiner must display a document on the video feed during a remote video deposition while questioning the witness about the document.

1. Prior Disclosure of Documents for Use at Deposition

Fairness to opposing counsel,[16] as well as compliance with NRCP 16.1, requires that any document that is to be referred to, utilized, or attached as an exhibit during a deposition must be disclosed *prior* to the deposition.[17] Rule 16.1 (a)(1)(A)(ii)[18] requires disclosure of

> . . . all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, including for impeachment or rebuttal, and, unless privileged or protected from disclosure, any record, report, or witness statement, in any form, concerning the incident that gives rise to the lawsuit.

/ / /

Rule 16.1(a)(1)(C) mandates that initial disclosures must be made within 14 days after the parties' early case conference – or Rule 16.1(b) conference – unless a different time is ordered by the court or agreed to by the parties. Parties who join after the initial Rule 16.1(b) conference are given 30 days after filing of their answer – or Rule 12 motion – to make their disclosures.

It is important to note that a party "must make its initial disclosures based on the information then reasonably available to it." NRCP 16.1(a)(1)(E). Fairness to opposing counsel requires that seasonal supplements be made and that the disclosure allows adequate time for counsel to review and prepare with clients before depositions begin.

Disclosing a document for the first time in a deposition constitutes gamesmanship and may warrant sanctions. Put simply, gamesmanship includes any attempt to gain competitive advantage by either an artful manipulation of the rules, untimely or nondisclosure of information, or outright deception. Litigants "should not indulge in gamesmanship with respect to the disclosure obligations."[19]

Gamesmanship violates NRPC 3.4(a), which provides:

> A lawyer shall not:
>
> (a) Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

There is no room for gamesmanship in the discovery process. It is antithetical to the purpose of discovery and unethical. Manipulation of the discovery rules frustrates the entire process, "because one of '[t]he purpose[s] of discovery is to remove surprise from trial preparation so the parties can obtain evidence necessary to evaluate and resolve their dispute.'

///

Thus, '[o]pen discovery is the norm [and] *gamesmanship with information is discouraged and surprises are abhorred.*'"[20]

The Ninth Circuit's decision in *Haeger v. Goodyear Tire & Rubber Co* clearly set forth why courts are intolerant of gamesmanship in the discovery process. It cites the lower court's underlying decision, noting:

> Litigation is not a game. It is the time - honored method of seeking the truth, finding the truth, and doing justice. When a corporation and its counsel refuse to produce directly relevant information an opposing party is entitled to receive, they have abandoned these basic principles in favor of their own interests.[] The little voice in every attorney's conscience that murmurs turn over all material information was ignored.[21]

Fairness to counsel and compliance with the discovery rules is the only way to ethically litigate. Gamesmanship has no place in depositions; it will result in sanctions.

2. Seeking Documents Through Deposition Notice or Subpoena

A party *may not* attempt to circumvent NRCP 34's 30-day deadline for requiring another party to disclose documents by instead seeking them via subpoena. *A Rule 34 request is the proper procedure to seek production of documents from a party to a lawsuit.*[22] Pursuant to NRCP 45(a)(1), a subpoena may only be used to command a *nonparty* to produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or to permit the inspection of premises.[23]

NRCP 45(a)(4)(A) requires at least 7 days' notice to the other parties to the litigation before a subpoena may be served on the person to whom or entity to which it is directed. The advanced notice allows parties to the litigation the opportunity to file a timely objection and a motion for a protective order to prevent the disclosure of privileged, confidential, or other protected matter.[24] A party may only object on behalf of itself; it may not object on behalf of another.

To seek protection under Rule 45(a)(4)(B), the objecting party must "file and serve written objections to the subpoena and a motion for a protective order under Rule 26(c) within 7 days after being served with notice and a copy of the subpoena under Rule 45(a)(4)(A).[25] In both the objection and the motion, the party must 1) specifically state the party's objections to each command for production or inspection; and 2) demonstrate the basis for asserting the command will require disclosure of "privileged, confidential, or other protected matter and establish that no exception or waiver applies and that the objecting party is entitled to assert the claim of privilege or other protection against disclosure."[26] An objection and motion filed on these grounds acts to stay service of the subpoena until the court rules on the objection and motion.[27]

Any objection or motion for protective order *not* based on privilege, confidentiality or other recognized protection from disclosure – i.e. the work product doctrine – does not automatically stay service of the subpoena. In those instances, the objecting party must apply to the court for relief under Rule 26(c).[28]

E. Coaching the Witness

A witness at trial may not request a break to be coached by counsel;[29] the same rule applies to a deposition. If a break is necessary, special care should be taken to maintain the attorney-client privilege. The Nevada Supreme Court in *Coyote Springs Investment v. Eighth Jud. Dist. Ct.*[30] held that one "may not request a break to confer with witnesses in a discovery deposition unless the purpose of the break is to determine whether to assert a privilege."[31] An attorney may communicate with a witness during an unrequested break or recess.[32]

If a "private conference" is required to determine whether to assert a privilege, the witness' attorney must place the following on the record when the deposition resumes: 1) the fact that a conference took place; 2) the subject of the conference; and 3) the result of the conference–the decision whether to assert a privilege.[33] Any discussion on other topics waives the attorney-client privilege as to that portion of the conference.[34]

III. WITNESS CONDUCT DURING DEPOSITIONS

Witnesses must give direct answers to straightforward questions. The Court will treat evasive deposition testimony as a failure, if not a refusal, to testify.[35] The Court treats inappropriate behavior from all witnesses on an equal footing.

All witnesses, including expert witnesses, are subject to the same rule: "an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond."[36] Some expert witnesses and Rule 30(b)(6) designees seem to operate under the misguided belief that their position as a subject matter expert renders them exempt from the requirement to participate in depositions without "imped[ing], delay[ing], or frustrate[ing] the fair examination of the deponent."[37] Expert and fact witnesses alike must permit a fair examination and must participate in discovery in good faith. An expert witness who fails to obey this Order may be subject to being stricken as an expert witness.

The following non-exhaustive list of inappropriate behaviors by a testifying witness, are tantamount to failure, if not a refusal, to testify:[38] 1) repeated failure or refusal to give direct answers to straightforward questions; 2) non–responsive narratives designed to filibuster; 3) refusal to give estimates so as to avoid giving meaningful testimony; 4) impertinent statements; and 5) feigning lack of knowledge by providing "I don't know" responses so as to avoid answering questions.[39]

Personal sanctions against the witness, party, and/or any counsel who facilitate or encourage a witness to impede a fair examination (or counsel who fail to instruct a witness on the record to cease such behavior) may be appropriate. The Court may also compel further testimony when a deponent fails to answer a question asked or otherwise frustrates a fair examination.[40]

A party who violates this Order risks not only the trier of fact taking their evasiveness as a lack of veracity, but also the imposition of the most severe discovery sanctions available. NRCP 37(d)(3) and NRCP 37(b)(1) allow the Court to: 1) require the party failing to act, the attorney advising that party, or both to pay the reasonable expenses, including attorney fees, caused by the failure; 2) direct that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims; 3) prohibit the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence; 4) strike pleadings in whole or in part; 5) stay further proceedings until the order is obeyed; 6) dismiss the action or proceeding in whole or in part; 7) render a default judgment against the disobedient party; and/or 8) treat as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

IV. LODGING OBJECTIONS

A. Objections Preserved for Trial

Under normal circumstances, an attorney defending a deposition is rarely faced with the need or opportunity to lodge an objection. All objections dealing with the admissibility of a witness' testimony are preserved for trial and are not to be made at the deposition.[41] Except as further discussed below, the only need for an objection during a deposition is to address the ***form*** of the question itself, not the testimony it elicits or the subject matter of the question.[42]

All deposition objections are preserved for trial except to: 1) assert a privilege;[43] 2) enforce a limitation ordered by a court;[44] 3) present a motion under Rule 30(d)(3);[45] 4) object to a party's conduct;[46] 5) object to the lack of foundation;[47] or 6) to object to the form of the question where the objection would be waived if not made.[48] Objections to the form of the question are waived if not timely made.[49] It is improper to impede the fair examination of a witness by lodging preserved objections at a deposition.

B. Objecting to the Form of the Question

Objecting to the form of the question allows the examiner an opportunity to cure the question's deficiency while at the deposition—because it cannot be cured while being read at trial.[50] NRCP 30(d)(1) requires "an objection must be stated concisely, and in a non-argumentative and non-suggestive manner."

There is much debate regarding the appropriate way to lodge an objection during a deposition. If the objecting party merely states "object to the form of the question,"[51] the objection does not provide sufficient information to inform the examiner of the defect in the question which needs to be cured, preventing the seasonable curing of the objectionable part.[52] This, in turn, invites a colloquy between counsel regarding exactly how the form of the question might be inappropriate. All too often, the colloquy ends in unnecessary disagreement. Nevertheless, as this is the examiner's opportunity to cure any defect, objecting counsel must concisely state the nature of the defect without argument if asked to explain the basis for the objection.

In this District, form objections are limited to stating: 1) that the form of the question is objectionable; and 2) identifying the specific way the form is objectionable, *i.e.* that it calls for speculation. Any discussion beyond these basics is both an inappropriate "speaking objection" and may subject counsel to sanctions because it is tantamount to coaching the witness.[53] For example, interjecting a long-winded explanation of the question's deficiency is improper. The following are examples of inappropriate objections:

Example: "Objection, vague and ambiguous. Counsel, what period are you asking about? If you are asking about 2019, the witness would have no knowledge."

Example: "Calls for speculation. The witness can't possibly know what Mr. Y was thinking. You are asking him to guess."

The following are ***appropriate*** deposition form objections in this District:

1. Objection to the form of the question—Ambiguous;[54]
2. Objection to the form of the question—Vague or unintelligible;[55]
3. Objection to the form of the question—Argumentative;[56]
4. Objection to the form of the question—Calls for a narrative;[57]
5. Objection to the form of the question—Calls for speculation;[58]
6. Objection to the form of the question—Compound;[59]
7. Objection to the form of the question—Leading;[60]
8. Objection to the form of the question—Mischaracterizes/Misstates the witness' prior testimony;[61] and
9. Objection to the form of the question—Mischaracterizes/Misstates the evidence.[62]

C. Obstructionist Behavior

Counsel must resist the urge to engage in string objections, coupling multiple specific objections together. String objections, such as "objection to the form of the question—lacks foundation, compound, calls for speculation, legal conclusion, document speaks for itself, and seeks information that is not proportional to the needs of the case" are generally not appropriate and must be avoided.

Objections to "relevancy,"[63] "hearsay,"[64] "asked and answered,"[65] "best evidence,"[66] "the document speaks for itself,"[67] and "assumes facts not in evidence"[68] do not go to the form of the question and are, therefore, improper unless asserted for the purpose of making a record of abusive behavior. Making these types of improper objections may result in personal sanctions against objecting counsel for discovery abuse.[69]

Courts in this District have consistently ruled that coaching a witness through improper deposition objections is not permitted and may be sanctionable.[70] Counsel must not coach the witness by interpreting questions (for example, "What counsel is trying to ask is . . ."), deciding what questions the witness will answer, or helping the witness answer questions.[71] "Objection to the form. Foundation. Mischaracterizes his prior testimony. The witness said 'X' not 'Y'" is an example of this type of inappropriate objection.

One discovery commissioner wrote:

> [C]oaching of the witnesses and general interruptions in the deposition procedure cannot be tolerated; constant objections and gratuitous remarks contaminate the deposition proceeding, depriving counsel of the right to a fair examination; comments by the non-deposing attorney such as 'if you remember,' 'if you know,' 'do you understand the question,' 'you've answered the question,' 'he wants to know,' 'if he has recollection,' 'don't speculate' or 'don't guess' are improper.[72]

U.S. Magistrate Judge Leen once suggested to the prominent attorneys appearing in front of her for discovery abuse that they should be aware of the following elemental discovery rules that are enforced in this District as well:

> If I was an elementary school teacher instead of a judge I would require both counsel to write the following clearly established legal rules on a blackboard 500 times:
>
> I will not make speaking, coaching, suggestive objections which violate Rule 30(c)(2). I am an experienced lawyer and know that objections must be concise, nonargumentative and non-suggestive. I understand that the purpose of a deposition is to find out what the witness thinks, saw, heard or did. I know that lawyers are not supposed to coach or change the witness's own words to form a legally convenient record. I know I am prohibited from frustrating or impeding the fair examination of a deponent during the deposition. I know that constant objections and unnecessary remarks are unwarranted and frustrate opposing counsel's right to fair examination. I know that speaking objections such as "if you remember," "if you know," "don't guess," "you've answered the question,"

> and "do you understand the question" are designed to coach the witness and are improper. I also know that counsel's interjection that he or she does not understand the question is not a proper objection, and that if a witness needs clarification of a question, the witness may ask for the clarification.[73]

This Court further agrees with U.S. Magistrate Judge Seeger, who suggested "[i]t is unsurprising that witnesses typically testify that they can't remember after they hear 'if you remember.' And they almost always say that they don't know after counsel blurts out 'if you know.' Such coaching-by-thinly-veiled-instruction violates [the law]."[74]

In addition to coaching, other obstructionist behavior during a deposition includes: 1) frequently objecting as a means to harass the deponent or opposing counsel; [75] 2) objecting with the purpose of interrupting the flow of the deposition;[76] 3) instructing a witness not to answer for ***any reason*** other than as allowed by the NRCP or as stated herein;[77] 4) making intimidating or rude comments;[78] and 5) arguing between counsel in front of the witness.[79] Engaging in any obstructionist behavior that "impedes, delays, or frustrates the fair examination of the deponent," invites the Court to sanction objecting counsel.[80]

Counsel may seek limited reasonable clarifications without violating this Order. As one court suggested:

> Sometimes questions are generally unclear and a modest clarification can clear things up. For example, it is acceptable to ask the questioning attorney to clarify what month or year he or she is asking about (if the time period matters), especially when the questioning attorney moves back and forth between different time periods. As a second example, asking the questioning attorney to clarify who "he," "she," or "they" refer to is acceptable, too. As a final example, it is acceptable to ask the questioning attorney about the origin or completeness of an exhibit if, for example, it: (1) lacks a bates number; (2) is missing an attachment; (3) appears to be an improper compilation of different documents; or (4) otherwise appears improper, incomplete, or over-inclusive. Such requests for clarification must be unobtrusive, in good faith, and (hopefully) rare.[81]

D. Instructing a Witness not to Answer

"A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3)."[82] When counsel instructs a witness not to answer a question, examiners often terminate the deposition without finishing and seek a protective order. The best practice is to: 1) preserve the issue regarding the instruction on the record for later resolution by the parties or the Court; and 2) finish the examination as to all other topics before suspending or terminating the deposition for the purpose of seeking protection from the Court.

V. RULE 30(B)(6) DEPOSITIONS

A. Taking the Deposition of an Entity

NRCP Rule 30(b)(6) allows the deposition of any "public or private corporation, a partnership, an association, a governmental agency, or other entity." Because an entity cannot speak for itself, the law requires that the entity designate a spokesperson or spokespersons whose testimony will "represent[] the knowledge of the corporation" and bind the entity by their answers.[83]

B. Identifying the Topic(s) and the Designee(s)

Rule 30(b)(6) imposes burdens on both the discovering party and the designating party.[84] The notice of taking deposition (or subpoena for a non-party) "must describe with reasonable particularity the matters for examination."[85] Although there is no limit to either the number or breadth of the topics permitted under Rule 30(b)(6), noticing counsel must be guided by Rule 26(b)(1)'s proportionality factors and by Rule 26(g)'s certification requirement.

/ / /

"The reasonableness of the length and scope of a deposition notice turns on the circumstances of each case."[86] Protection is available under Rule 26(c)(1) for notices that are disproportionate to the needs of the case.

Parties who object to the number or description of topics for examination must confer in good faith promptly upon the service of the subpoena or notice to "facilitate[] collaborative efforts to achieve the proportionality goals [of the Rules]."[87] Parties who designate a disproportional number of topics—including for the purpose of burdening the responding party—may be subject to sanctions.[88]

The requesting party must designate the areas of inquiry with "painstaking specificity" such that they reasonably put the entity on notice of the subject matter of anticipated questions, as the entity must educate its designee(s) concerning the noticed topics.[89] Where the responding party cannot identify the outer limits of areas of inquiry, compliant designation and preparation is not feasible; therefore the notice is not sufficiently specific.[90] Further, the noticed topic areas of inquiry are the "minimum" about which the designated representative must speak, not the "maximum".[91]

C. The Myth of the "PMK" Deposition

Some practitioners inaccurately refer to a Rule 30(b)(6) entity deposition as a deposition of the "PMK" or "Person Most Knowledgeable". There is no such type of deposition recognized under the NRCP *for the purpose of binding the entity*. Nor is a party entitled to force the entity to produce its "Person Most Knowledgeable" under Rule 30(b)(6).[92] The entity chooses its own designee and is not forced to provide the person with the most personal or first-hand knowledge—the "named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf."[93] The entity must only prepare the designee and be willing to be bound by the designee's testimony.

D. The Entity's Obligation to Educate and Prepare a Witness

The designee need not have *personal knowledge* on any topic presented, but the entity has an affirmative duty to "make a conscientious, good-faith effort to designate knowledgeable persons for Rule 30(b)(6) depositions and to prepare them to fully and unevasively answer questions about the designated subject matter."[94] In other words, the entity may name its CEO or its janitor as its designee as long as it fully educates the individual on the topics and is willing to be bound by testimony that "represents the knowledge of the corporation, not the individual deponent's."[95]

The entity is obligated to prepare any designee to testify: 1) beyond matters personally known to the witness or to matters in which the designated witness was personally involved; 2) on matters reasonably known by the responding party; 3) to the extent matters are reasonably available, whether from documents, past employees, past owners, or other sources; and 4) by having the designee review prior fact witness deposition testimony as well as documents and deposition exhibits.[96]

Although adequately preparing witness for a Rule 30(b)(6) deposition can be burdensome, "this is merely the result of the concomitant obligation from the privilege of being able to use the corporate form in order to conduct business."[97] Further, if it becomes apparent during the deposition that the designee is unable to respond to relevant and properly-noticed areas of inquiry, the responding party has a duty to designate an additional knowledgeable deponent. Failure to produce a Rule 30(b)(6) designee who is adequately educated and prepared to testify on adequately-designated topics is tantamount to a nonappearance which could warrant the imposition of sanctions.[98]

If an entity designates more than one spokesperson under Rule 30(b)(6), the designees collectively count as one deposition toward the presumptive maximum of ten depositions per side.[99] While an entity is at liberty to designate as many spokespersons as it deems necessary, "for purposes of this *durational limit*, the deposition of *each person* designated under Rule 30(b)(6) should be considered a separate deposition."[100] In other words, the deposing party may depose *each* designee for up to 7 hours in 1 day, subject to a protective order where appropriate.

E. Objecting to the Rule 30(b)(6) Notice

The entity receiving a Rule 30(b)(6) notice may object to topics outlined in a Rule 30(b)(6) notice, but the entity must also seek and obtain a protective order from the Court before going forward with the deposition.[101] Moreover, the filing of a motion does not relieve an entity from appearing and testifying at a deposition—that obligation is only relieved by obtaining a protective order.[102] Cooperative, civil counsel will postpone a deposition pending the decision on a motion for protective order unless doing so would adversely affect their client's rights.

F. Questions Beyond the Scope of the Notice

When a designee is asked questions beyond the scope of the noticed topics, counsel may not instruct the deponent not to answer,[103] but may note on the record that because the question goes beyond the scope of the notice, the answers will not bind the entity.[104]

///

///

VI. SEEKING COURT INTERVENTION

A. Court Intervention *After* Exhausting all Other Alternatives

The Court expects counsel to act consistent with this Order. When opinions differ regarding the propriety of a question or behavior, counsel must rise above their roles as advocates and attempt to resolve the differences without court intervention.[105] Deposition disputes requiring court intervention should therefore be extremely rare.

On those rare occasions where there is a deposition dispute, counsel must attempt to resolve the dispute without court intervention. If counsel violates this Order, remind counsel of or provide counsel with a copy of this Order on the record. Counsel must exhaust all avenues to resolve a dispute that threatens the ability to proceed with a deposition. If offending counsel continues to behave inappropriately, consider taking a break to allow temperatures to cool and to have a private conversation between counsel to resolve the dispute.

If reminding counsel of this Order does not change the inappropriate behavior, counsel must object on the record, identifying the specific inappropriate behavior or questioning. The "objection must be stated concisely, and in a non-argumentative and non-suggestive manner," describing the improper conduct.[106]

If counsel are still unable to resolve the dispute, counsel should preserve the dispute on the record for later resolution by the parties or the Court but finish the examination as to all other topics before suspending or terminating the deposition for the purpose of seeking protection from the Court.

B. Contacting the Discovery Commissioner During a Deposition

Only in rare circumstances where counsel are not able to resolve the matter despite reference to this Order, counsel may contact the discovery commissioner assigned to the matter during the deposition to obtain a ruling during or after a deposition. Resolution *during* a deposition promotes "the just, speedy, and inexpensive determination of [the] action and proceeding"[107] and is preferred where practical to expensive and time-consuming motion practice. *Counsel must not treat the ability to call to the discovery commissioner as a* ***substitute*** *for a good faith attempt to resolve the matter consistent with this Order.*

If *all counsel* agree, the discovery commissioner will take a call during a deposition (or accept an invitation to participate in a streamed video deposition) to resolve a dispute if available. Counsel should immediately inform the discovery commissioner if the call or video stream is "on the record". Counsel should be prepared to explain the dispute, together with their efforts to resolve the same without court intervention. The discovery commissioner will make a ruling if possible. Where the discovery commissioner cannot determine that questions or behavior are inappropriate without reviewing the transcript, a motion and formal briefing may be required. If any party disagrees with the discovery commissioner's ruling, counsel may submit a discovery commissioner's Report and Recommendation within 14 days of the deposition dispute or the objection is waived. The parties may then avail themselves of the objection procedures allowed by NRCP 16.3(c).

///

///

///

///

///

///

///

C. Filing a Motion Based on Deposition (Mis)Behavior

As a prerequisite to filing a motion based on deposition behavior and/or a violation of this Order, counsel must provide the Court with a transcript or other proof consistent with EDCR 2.34 showing that counsel engaged in a meaningful, good faith meet and confer, including a fulsome discussion of each participant's obligations under this Order.

DISCOVERY COMMISSIONER

DISCOVERY COMMISSIONER

IT IS SO ORDERED.

Dated this 9th day of May, 2022

0CA 994 1719 D20E
Linda Marie Bell
District Court Judge

---

[1] Nevada Rules of Civil Procedure ("NRCP"), Rule 1.

[2] Much of the language in this Standard Order is patterned after or taken from similar orders from courts in other jurisdictions. While those orders are not credited everywhere, their contributions are noted and appreciated. Some of those orders include Standing Order: Depositions, U.S. District Court for the Norther District of Illinois; 2019 Florida Handbook on Civil Discovery Practice; Guidelines For Civility In Litigation, Los Angeles Superior Court Local Rules Chapter Three, Civil Division, Appendix 3.A; Cuyahoga County, Ohio Common Pleas Court Local Rules, Rule 13.1 Deposition Conduct; Guidelines for Deposition Behavior, 16th Circuit for Jackson County, Missouri, Division 11; U.S. District Court, District of Utah Rule 30-1.

[3] NRPC, Rule 3.1.

[4] *See* NRCP 30(c)(1); *see also* FRCP 30 Advisory Committee Notes, 1993 Amendments; NRCP 30 Advisory Committee Notes, 2019 Amendments (the "amendments generally conform Rule 30 to FRCP 30"). While Advisory Committee notes are not binding on the Court, they explain the intent behind the rules and are nearly universally accorded great weight in interpreting the rules. *Horenkamp v. Van Winkle & Co., Inc.*, 402 F.3d 1129, 1132 (11th Cir. 2005) (internal quotation mark and citation omitted); *see generally 3M Company v. Boulter*, 842 F.Supp.2d 85, 96-101 (D. D.C. 2012).

[5] *Dunn v. Wal-Mart Stores, Inc.*, No. 2:12-CV-01660-GMN, 2013 WL 5940099, at *2 (D. Nev. Nov. 1, 2013).

[6] NRCP 30 Advisory Committee Notes, 2019 Amendments.
[7] *See* Federal Rules of Civil Procedure ("FRCP") Rule 30 Advisory Committee Note, 2000 Amendments.
[8] NRCP 30(b)(4).
[9] *Okada v. Eighth Jud. Dist. Ct.*, 131 Nev. 834, 359 P.3d 1106 (2015) (citing 8A Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, *Federal Practice and Procedure* § 2112 (3d ed. 2010)).
[10] *Id.*
[11] *Id.*, 359 P.3d at 1111 (citing *Cadent Ltd. v. 3M Unitek Corp.*, 232 F.R.D. 625, 629 (C.D. Cal. 2005)).
[12] *Id.*, 359 P.3d at 1112.
[13] NRCP 26(b)(1); *V5 Techs. v. Switch, Ltd.*, 334 F.R.D. 306, 313 (D. Nev. 2019), aff'd sub nom. *V5 Techs., LLC v. Switch, LTD.*, No. 2:17-CV-2349-KJD-NJK, 2020 WL 1042515 (D. Nev. Mar. 3, 2020) (depositions are generally limited to questions that seek relevant information).
[14] NRCP 30(d)(3)(A).
[15] NRCP 30(d)(2).
[16] NRPC 3.4
[17] Excluding privileged *sub rosa* videos.
[18] Family Division cases are governed by the provisions of NRCP 16.2 and NRCP 16.205, but similarly require disclosure of documents *prior* to deposition.
[19] *See* FRCP 26(a) Advisory Committee Notes, 1993 Amendments; cited by *Sender v. Mann*, 225 F.R.D. 645, 650 (2004).
[20] *Jackson v. United Artists Theatre Circuit, Inc.*, 278 F.R.D. 586, 592 (D. Nev. 2011) (internal citations omitted). Emphasis in original.
[21] *Haeger v. Goodyear Tire & Rubber Co.*, 813 F.3d 1233, 1237 n.1., 93 Fed. R. Serv. 3d 1519, 16 Cal. Daily Op. Serv. 1659 (9th Cir. 2016).
[22] NRCP 34.
[23] NRCP 45(a)(1)(A)(3).
[24] NRCP 45(a)(4)(A).
[25] NRCP 45(a)(4)(B)(ii).
[26] NRCP 45(a)(4)(B)(iii).
[27] NRCP 45(a)(4)(B)(iv).
[28] NRCP 45(a)(4)(B); NRCP 26(c).
[29] *See e.g., Perry v. Leeke,* 488 U.S. 272, 281, 109 S.Ct. 594, 600 (1989) (a witness has no right to consult with his lawyer while testifying).
[30] *Coyote Springs Inv., LLC v. Eighth Judicial Dist. Court of State ex rel. County of Clark*, 131 Nev. 140, 347 P.3d 267 (2015).
[31] *Id., 131 Nev. at 149, 347 P.3d at 273 (2015)*
[32] *Id.*
[33] *Id.*, 131 Nev. at 147, 347 P.3d at 272.
[34] *Id.*
[35] NRCP 37(a)(4).
[36] *Id.*
[37] NRCP 30(c)(2).
[38] *See Rapaport v. Soffer*, No. 2:10-CV-935-MMD-RJJ, 2012 WL 6799742, at *4 (D. Nev. Dec. 31, 2012).
[39] Where the information sought is simple and within the expected knowledge of the deponent.
[40] NRCP 30(d)(1); NRCP 37; *V5 Techs. v. Switch,* 334 F.R.D. at 313.
[41] NRCP 32(b); *see also* NRS Chapter 49.
[42] *In Re Stratosphere Corp. Securities Litigation,* 182 F.R.D. 614 (D. Nev. 1998).
[43] NRCP 30(c)(2).
[44] *Id.*
[45] *Id.; see also* NRCP 30(d)(3)(A) ("At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party.")
[46] NRCP 32(d)(3)(B).
[47] NRCP 32(d)(3)(A).
[48] *Id.*

[49] NRCP 32(d)(3)(B).
[50] *Id.*
[51] The shortcut version "Objection—Form" is often substituted for "Objection to the form of the question."
[52] *Sec. Nat. Bank of Sioux City, Iowa v. Abbott Labs*, 299 F.R.D. 595, 596 (N.D. Iowa 2014), rev'd sub nom., *Sec. Nat. Bank of Sioux City, IA v. Day*, 800 F.3d 936 (8th Cir. 2015).
[53] *Luangisa v. Interface Operations*, No. 2:11-CV-00951-RCJ, 2011 WL 6029880, at *7 (D. Nev. Dec. 5, 2011) (internal citation omitted).
[54] Explain precisely and succinctly without argument what is ambiguous about the question (e.g. Ambiguous as to the term "X").
[55] Explain precisely and succinctly without argument what is vague or unintelligible about the question (e.g. Vague as to the time").
[56] *In re Stratosphere,* 182 F.R.D. at 618.
[57] *Id.*
[58] NRS 50.025; NRS 50.265.
[59] *In re Stratosphere,* 182 F.R.D. at 618.
[60] NRS 50.115(3).
[61] Amir Shachmurove, *Disruptions' Function: A Defense of (Some) Form Objections Under the Federal Rules of Civil Procedure*, 12 Seton Hall Circuit Rev. 161, 191 (2016).
[62] *Id.*
[63] An objection to relevance is "not waived by a failure to make the objection before or during the deposition, unless the ground for it might have been corrected at that time." NRCP 32(d)(3)(A); NRCP 30(c)(2); NRCP 30(d)(3). Repeated irrelevant questioning that rise to the level of harassment or bad faith conduct may justify a protective order. *See In re Stratosphere*, 182 F.R.D. at 619; *See, e.g., Desert Valley Painting & Drywall v. United States*, 829 F. Supp. 2d 931, 939-40 (D. Nev. 2011). The mere fact that more than one, or even that a series of irrelevant questions is asked does not, by itself, constitute the annoyance or oppression contemplated by Rule (30)(d)(3). *Rivera v. Berg Elec. Corp.*, No. 2:08-CV-01176-PMP, 2010 WL 3002000, at *2 (D. Nev. July 28, 2010).
[64] The question of hearsay is one of admissibility; therefore, objections to hearsay evidence are preserved for trial. NRS 51.065; NRCP 32(b).
[65] Obstructionist counsel inappropriately use this objection to coach witnesses that they should offer no new testimony besides what was already offered.
[66] NRS 52.235
[67] This objection goes to the admissibility of the testimony, not to the form of the question and is therefore preserved for trial. NRCP 32(b).
[68] A deposition is not a trail; therefore *nothing* is "in evidence" yet. *Garcia v. Clark,* 2012 WL 1232315 (E.D. Cal. Apr. 12, 2012); *but see In re Stratosphere,* 182 F.R.D. at 619 ("assumes facts not in evidence" is an appropriate objection as to the form).
[69] Weil & Brown, *Cal. Practice Guide: Civil Procedure Before Trial* (The Rutter Group 2017) ¶ 8:722.1.
[70] Coaching a witness at a deposition is inappropriate. *See generally Coyote Springs Inv., LLC*, 131 Nev. at 147, 347 P.3d at 272; *see also In re Stratosphere,* 182 F.R.D. at 621 ("What this Court, and the Federal Rules of Procedure seek to prevent is coaching the witness by telling the witness what to say or how to answer a specific question. We all want the witness's answers . . ..")
[71] *Hall v. Clifton Precision*, 150 F.R.D. 525, 531 (E.D. Pa. 1993).
[72] *Olivarez v. Rebel Oil Company, et al.*, Discovery Commissioner Opinion #11 (April 2003) (internal citations omitted).
[73] *Mazzeo v. Gibbons*, No. 2:08-CV-01387, 2010 WL 3020021, at *2 (D. Nev. July 27, 2010).
[74] *Standing Order*: Depositions, U.S. District Court for the Norther District of Illinois, https://www.ilnd.uscourts.gov/PrintContent.aspx?cmpid=1128 accessed March 15, 2022.
[75] NRCP 30(d)(2).
[76] *Id.*
[77] NRCP 30(c)(2).
[78] *See* NRCP 30(d)(2); NRCP 30(d)(3)(A); NRCP 26(c)(1) (the court may "issue an order to protect a party or person from annoyance, embarrassment, oppression . . ..")
[79] *In re Stratosphere,* 182 F.R.D. at 622.

[80] NRCP 30(d)(2).
[81] *See Standing Order, supra* n. 74.
[82] NRCP 30(c)(2).
[83] *Great Am. Ins. Co. of New York v. Vegas Const. Co.*, 251 F.R.D. 534, 538 (D. Nev. 2008) (internal citations omitted).
[84] *Id.*
[85] NRCP 30(b)(6).
[86] *Reno v. W. Cab Co.,* Case No. 2:18-cv-00840-APG-NJK, 2020 WL 5902318, at *2 (D. Nev. Aug. 31, 2020).
[87] FRCP 30 Advisory Committee Notes, 2020 Amendments.
[88] NRCP 26(g).
[89] *Prokosch v. Catalina Lighting, Inc.,* 193 F.R.D. 633, 638 (D. Minn. 2000).
[90] Wang, Joyce C., Lambrinos, Demetrius, and Murphy, Meredith L., *Speak for Yourself: The 30(b)(6) Deposition*, ABA (Sept. 19, 2019) (citing *McBride v. Medicalodges, Inc.,* 250 F.R.D. 581, 584 (D. Kan. 2008)).
[91] *Crawford v. Franklin Credit Mgmt. Corp.,* 261 F.R.D. 34, 38 (S.D. N.Y. 2009).
[92] If a party learns through interrogatories or another discovery device that Ms. Smith is the person at an entity who has the most knowledge about a topic that is relevant and proportional to the needs of the case, the party may take Ms. Smith's deposition, but her testimony will not bind the entity unless the entity voluntarily produces her as its Rule 30(b)(6) designee.
[93] NRCP 30(b)(6).
[94] *Great Am. Ins. Co.,* 251 F.R.D. at 538 (internal citations omitted).
[95] *Id.* (Rule 30(b)(6) designee binds company regardless of designee's personal knowledge on the subject).
[96] *Id.* (internal citations omitted).
[97] *Id.* (internal citations omitted).
[98] *Id.*
[99] NRCP 30(a)(2)(A)(1); *see also* Fed. R. Civ. P. 30(a)(2)(A) Advisory Committee Notes, 1993 Amendments.
[100] FRCP 30(b)(6) Advisory Committee Notes, 2000 Amendments (emphasis added).
[101] *U.S. E.E.O.C. v. Caesars Entm't, Inc.*, 237 F.R.D. 428, 436 (D. Nev. 2006) (discussing the circumstances under which a protective order to Rule 30(b)(6) topics may be appropriate); *Beach Mart, Inc. v. L & L Wings, Inc.,* 302 F.R.D. 396, 406 (E.D. N.C. 2014) (the "proper procedure to object to a Rule 30(b)(6) deposition notice is not to serve objections on the opposing party, but to move for a protective order.").
[102] *Nationstar Mortg., LLC v. Flamingo Trails No. 7 Landscape Maint. Ass'n*, 316 F.R.D. 327, 336–37 (D. Nev. 2016) (citing *Pioche Mines Consol., Inc. v. Dolman*, 333 F.2d 257, 269 (9th Cir. 1964) ("unless [the movant] has obtained a court order that postpones or dispenses with his duty to appear, that duty remains"); *see also In re Toys "R" Us–Delaware, Inc. Fair & Accurate Credit Transactions Act (FACTA) Litig.*, No. ML 08–1980 MMM (FMOx), 2010 WL 4942645, at *3 & n. 2 (C.D. Cal. July 29, 2010) (failure to attend deposition was unexcused despite the pendency of a motion for protective order)).
[103] NRCP 30(c)(2).
[104] *U.S. E.E.O.C. v. Caesars Ent., Inc.*, 237 F.R.D. 428, 433 (D. Nev. 2006) (internal citations omitted).
[105] *Luangisa,* 2011 WL 6029880, at *6 (D. Nev. Dec. 5, 2011) (internal citations omitted).
[106] NRCP 30(d)(1).
[107] NRCP 1.