

FEBRUARY 18, 2022

USING A DEPOSITION
AT TRIAL

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A. USE OF DEPOSITIONS AT TRIAL

I. SUBSTANTIVE EVIDENCE

(a) Adverse party

(b) Witness who is unavailable – witness is not in court because he/she resides out of state, is deceased, resides more than 150 miles from place of trial, etc. CCP § 2025.620 (Attachment 1.5); FRCP Rule 32(a)(4) (100 miles from place of trial).

(c) Out-of-state witness – if you want to use it, must establish witness resides out-of-state. Wait until end of deposition to establish out-of-state residency (page 46, G1(a)).

II. IMPEACHMENT

Impeachment is accomplished by a prior inconsistent statement of the witness – in a deposition, letter, conversation. You can't impeach a witness, including the adverse party, by an inconsistent statement in a deposition of another witness.

(a) Adverse party who has testified.

(b) Third party witness who has testified.

(c) Use same question at trial as at deposition.

III. HOW TO USE DEPOSITION AT TRIAL AS SUBSTANTIVE EVIDENCE

(a) “Your Honor, may I read to the jury page ____, line ____ of the deposition of _____, who resides outside of the State of California?”

(b) May I publish the testimony?

(c) Put “witness” on the stand -- question and answer testimony.

(d) Do **NOT** mark deposition transcript. Do **NOT** offer deposition transcript into evidence. Instead, offer testimony from transcript with Judge's permission.

II IMPEACHMENT

HYPOTHETICAL 1

- March 2017 A makes repairs to B's car
- May 5, 2017 B writes letter to bank, in connection with an attempt to secure a loan, which states that car is in excellent condition as a result of having been repaired [AUTHENTICATE]
- October 2017 A sues B for \$1,000 for repair services. B's defense is that A's services were no good
- March 1, 2018 A takes deposition of B. B testifies that he didn't tell A, prior to A's suit filed in October 2017, that A's services were no good
- June 2018 Deposition signed by B, without changes
- March 3, 2019 Trial. B testifies that he had conversation with A in April 2017 that A's services were no good

May 5, 2017 LETTER

Re: Loan Secured By Car

Dear Bank:

My car has been recently repaired. As a result, it is in excellent condition.

Very truly yours,

Mr. B

DEPOSITION TESTIMONY OF B — MARCH 1, 2018

Q: You didn't tell A, prior to the filing of A's suit in October 2017, that A's services in repairing your car were no good, correct?

A. That is correct.

TRIAL

- Use of May 2017 letter
- Use of March 2018 deposition testimony

The May 5, 2017 letter

“I’d like the clerk to mark for identification as Plaintiff’s Exhibit 1 a letter dated May 5, 2017”

Q: Mr. B, let me show you a letter dated May 5, 2017 to Bank. Is this your signature at the bottom of the letter?

A: Ycs.

Your Honor, I’d offer the May 5, 2017 letter to Bank as Plaintiff’s Exhibit 1.”

Your Honor, may I publish the letter?

DON’T ASK:

Q: The letter states the car is in excellent condition as a result of it having been repaired, correct?

DON’T ASK:

Q: The letter was written by you on May 5, 2017, after the alleged conversation you had with A in April 2017, correct?

DON’T ASK:

Q: Doesn’t this letter show that A’s services were good?

A: No, I was told by the bank’s lending officer that I had to say the car was in excellent condition in order to get the loan.

The March 1, 2018 Deposition Testimony

Q: You had your deposition taken in this case on March 1, 2018, did you not? [Preamble -- Attachment 3.3]

Q: You were asked certain questions and gave answers to those questions at the deposition, correct?

Q: And you understood that when you gave those answers you had given an oath that the answers would be truthful, correct?

Q: And you understood that the oath you had given was entitled to the same respect as the oath given to you today when you took the witness stand, correct?

Q: And you understood that if you didn't tell the truth when answering the questions at your deposition, you would be subject to the same penalties as would be the case if you lied under oath today, correct? [Crime of perjury] And you understood that one of the penalties is the crime of perjury, correct?

Q: After you gave your deposition testimony, you received a transcript of your testimony in a booklet, correct?

Q: You signed the booklet, didn't you?

Q: You were advised that before signing the booklet, you could make any changes or corrections you wanted in order to make your testimony true and correct?

Q: And, you didn't make any changes or corrections, correct?

Q: Let me show you page __, lines)__ of your deposition testimony. May I read this to the jury (into the record), Your Honor?

May I publish the testimony Your Honor? [If videotape]
May I put the testimony up on the screen [If videotape]
Your Honor?

“Q: You didn't tell A, prior to the filing of A's suit in October 2017, that A's services in repairing your car were no good, correct?

A. That is correct.”

Q: Was this the question asked and was this the answer you gave under oath?

Q: [Were you lying under oath at your deposition on March 1, 2018, or are you lying under oath here today?]

IF DEPONENT DOESN'T SIGN BOOKLET

Q: ~~You signed the booklet, didn't you?~~

Q: You were advised that ~~before signing the booklet~~, you could make any changes or corrections you wanted in order to make your testimony true and correct?

Q: And, you didn't make any changes or corrections, correct?

BENCH TRIAL

BEGIN WITH:

Q: Let me show you page __, lines)__ of your deposition testimony.

“Question: You didn't tell A, prior to the filing of A's suit in October 2017, that A's services in repairing your car were no good, correct?”

Answer: That is correct.”

Q: Was this the question asked and was this the answer you gave under oath?