

2025–2026 EDITION

Objections: Interrogatories, Depositions, and Trial

Brien A. Roche
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Continuing Legal Education by the Virginia Law Foundation

OBJECTIONS:
INTERROGATORIES, DEPOSITIONS,
AND TRIAL

2025-2026 Edition

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Some common instances of interjections by counsel that are inappropriate and should not be allowed are: “If you know,” or “If you remember.” These are simply cues to the witness to say, “I don’t know” or “I don’t remember.”

2.909 Dealing with a Nonresponsive Witness. Methods of dealing with a nonresponsive witness in a deposition may be somewhat different than the way this would be done at trial.¹⁶³ At trial, counsel can ask the court to intervene, although the situation must generally have deteriorated before the judge will admonish a witness on this issue. With a jury present, the damage from the nonresponsive testimony may have already been done, so counsel should be prepared to object and, if necessary, to ask that such evidence be stricken.

2.910 Going off the Record. Sometimes, an attorney may try to control a deposition unilaterally by going off the record. This should be done by consent only. When this occurs, it can sometimes put the court reporter in the middle because the reporter’s loyalty may lie with the attorney who retained him or her. In some instances, counsel may need to remind the court reporter that technically the reporter’s duty is simply to record everything that is stated once the deposition begins.

2.911 Notice of Deposition. If a deposition is noticed by one party, are the non-defending parties allowed to partake? Probably they are, although it may make sense to file your own notice to be on the safe side.

2.912 Experts.¹⁶⁴ There are a number of issues involving objections that arise relating to experts or what may be called quasi-experts. In a medical malpractice action, the defendant doctor is technically not an expert and therefore should not be asked about standard of care opinions formed post-treatment but

¹⁶³ See paragraph 6.312 of Chapter 6 of this book for practical suggestions.

¹⁶⁴ See Chapter 7 of this book regarding expert witnesses.

certainly can be asked questions about professional opinions formed as the care was rendered to the plaintiff.

Letters from counsel to the expert are a frequent source of controversy. If those letters contain any statement of facts, then the requesting party is entitled to know what those facts are, as section 8.01-401.1 of the Virginia Code expressly provides for the expert disclosing underlying facts. To the extent that letters from counsel contain a statement of facts, those facts are discoverable. That may, however, require redaction of any statements of opinion by counsel. As to documents protected under section 8.01-581.17 in a medical malpractice action, peer review, quality care assurance, and professional program records may not be discoverable, but policy manuals or treatment protocols probably are discoverable.¹⁶⁵

Expert discovery is limited by:

1. Rule 4:1(b)(3) as to experts not to be called at trial; and
2. Rule 4:1(b)(4) requiring a court order for information other than what is allowed under this rule.¹⁶⁶

When opposing counsel's opening question to the expert witness is "Please tell me all of your opinions":

Objection: To the form of the question as all of the opinions are set forth in the expert designation.

Reply: I am still entitled to an answer on the record.

2.913 Corporate Designations. Under Rule 4:5(b)(6), a party may give notice of deposition to an organization and request

¹⁶⁵ *Johnson v. Roanoke Mem'l Hosps., Inc.*, 9 Va. Cir. 196, 205-06 (Roanoke City 1987).

¹⁶⁶ *Flora v. Shulmister*, 262 Va. 215, 222, 546 S.E.2d 427, 430 (2001).

that a witness be designated to testify on matters that are designated and described with reasonable particularity in the notice. Before, or promptly after the notice or subpoena is served, the serving party and the organization are required to confer in good faith about the matters that are described for examination. If the organization is a non-party, the subpoena must advise of the organization's duty to make the witness designation and to confer with the serving party. A recurring problem in regard to corporate designees is that a witness is produced who has no substantial knowledge of the issues addressed. If there is truly no one within the organization who has information, then a written response should be filed stating that. If a person is produced by designation, then that person should be someone who either has personal knowledge or has been prepared by the corporation to give binding answers for the corporation.¹⁶⁷

The rule indicates that the organization's designee can be made to testify concerning matters known or reasonably available to the organization. The rule's description of "matters known or reasonably available to the organization" probably extends to the testimony of employees who are fact witnesses. Such a corporate designee deposition can be a potent weapon for the party making the request since this is substantive testimony. Conversely, it can also be a very dangerous situation for the organization because the designee speaks for the entity and deposition testimony can be "used for any purpose,"¹⁶⁸ so proper preparation is important. The statement of issues presented by the notice should be closely scrutinized and appropriate objections filed if the deposition exceeds the scope of the request.¹⁶⁹

Objections to the notice given under Rule 4:5(b)(6) should be filed and ruled on before the deposition. Those objections might include:

¹⁶⁷ *United States v. Taylor*, 166 F.R.D. 356, 361 (M.D.N.C. 1996).

¹⁶⁸ Va. R. 4:7(a)(3).

¹⁶⁹ Va. Code § 8.01-420.4:1.

- Overbreadth—the notice should define the areas of inquiry with reasonable particularity. It is unfair to subject the organization to a deposition that has no discernable outer boundaries.¹⁷⁰
- Improper purpose—for example, in *Mattel, Inc. v. Walking Mountain Productions*,¹⁷¹ the court sanctioned the plaintiff for indirectly attacking the opposing expert witness by noticing a Rule 4:5(b)(6) deposition with the expert’s employer.
- Privilege—some courts preserve privileged or protected areas of inquiry and do not require corporate deponents to comment on those matters.¹⁷² If the notice indicates that privileged information is being requested, the entity should seek a protective order. Other courts have ruled that facts discovered by corporate counsel during internal investigations are part of the corporate knowledge and are discoverable.¹⁷³

A motion to quash improper service or to stay the taking of the deposition may also be considered in the appropriate circumstances.¹⁷⁴

¹⁷⁰ *Reed v. Nellcor Puritan Bennett & Mallinckrodt, Inc.*, 193 F.R.D. 689 (D. Kan. 2000).

¹⁷¹ 353 F.3d 792 (9th Cir. 2003).

¹⁷² See, e.g., *Alliance for Global Justice v. District of Columbia*, 437 F. Supp. 2d 32, 37 (D.D.C. 2006). But see *E.E.O.C. v. Caesars Entm’t, Inc.*, 237 F.R.D. 428 (D. Nev. 2006) (explanation of corporation’s responses to discrimination charges was not privileged).

¹⁷³ *In re Linerboard Antitrust Litig.*, 203 F.R.D. 197 (E.D. Pa. 2001).

¹⁷⁴ The discussion on objections first appeared in Virginia CLE’s seminar materials, *The Designated Hitter: Deposing a Corporation’s Designated Witness Under Federal Rule 30(b)(6) or Virginia Rule 4:5(b)(6)* (Virginia CLE 2019).

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¹⁷² See, e.g., *Alliance for Global Justice v. District of Columbia*, 437 F. Supp. 2d 32, 37 (D.D.C. 2006). But see *E.E.O.C. v. Caesars Entm’t, Inc.*, 237 F.R.D. 428 (D. Nev. 2006) (explanation of corporation’s responses to discrimination charges was not privileged).

¹⁷³ *In re Linerboard Antitrust Litig.*, 203 F.R.D. 197 (E.D. Pa. 2001).

¹⁷⁴ The discussion on objections first appeared in Virginia CLE’s seminar materials, *The Designated Hitter: Deposing a Corporation’s Designated Witness Under Federal Rule 30(b)(6) or Virginia Rule 4:5(b)(6)* (Virginia CLE 2019).

There is no limit on the number of corporate designation depositions that may be taken on different issues.

“I don’t know” is not an acceptable response—the entity has an obligation to educate the designee on the substance of material requested in the notice.¹⁷⁵

In terms of dealing with the “know nothing” witness, there are several options:

- File a motion for sanctions for the failure of the organization to produce a witness with knowledge;
- Request that a new witness be produced;
- File a motion requesting that the issues designated be determined adverse to the organization; and
- Do nothing and then use the deposition at trial to prove the negative. That is, if one of the issues identified in the designation is whether or not the defendant complied with some standard and the defendant produces a witness who has no knowledge of that, then that means the defendant, which is bound by the designee’s deposition, has no knowledge, and, therefore, that can be used as proof.

Other considerations for corporate designation depositions are:

¹⁷⁵ See, e.g., *Spicer v. Universal Forest Prods.*, No. 7:07cv462, 2008 U.S. Dist. LEXIS 77232 (W.D. Va. Oct. 1, 2008). Decided under Federal Rule of Civil Procedure 37(b)(2)—the federal counterpart to Virginia’s Rule 4:5(b)(6)—the *Spicer* opinion is a cautionary tale for entities that fail to comply with the rule’s requirements.