



# Deposition Trivia Gems



# Did you know . . .

There are three general types of depositions identified in the Florida Rules of Civil Procedure:

- (1) Depositions by **oral** examination;
- (2) Depositions by **written** questions; and
- (3) Depositions of **expert witnesses**.

# Did you know . . .

In some courts, it is not considered **contempt** for an **expert** to refuse to testify on the grounds that he/she has not been paid.



**Sources:** People ex rel. Kraushaar Bros. & Co. v. Thorpe, 296 N.Y. 233 (1947); Evans v. Otis Elevator Co., 403 Pa. 13 (1961).

# Did you know . . .

An expert who doesn't object to nonpayment may **not** thereafter, in the same hearing, **refuse** to answer certain other questions on the ground that the expert has not received such fees.

**Source:** In re Hayes, 200 N.C. 133 (1931).

# Did you know . . .

An *expert shoe repairer* was not compelled to testify at a deposition unless his additional fees were paid.



Source: Swope v. State, 145 Kan. 928 (1937).

# Did you know . . .

A deposition taken **without notice** could be used as an affidavit in a hearing on a motion for summary judgment.



**Source:** Stinnett v. Longi, Inc., 460 So. 2d 528 (Fla. 3d DCA 1994).

# Did you know . . .

A party may **compel** production of documents and other materials at the deposition of a nonparty witness by serving the witness with a **subpoena duces tecum**.

**Source:** Fla. R. Civ. P. 1.410(e).

# Did you know . . .

When a deposition is used against a party in a **jury trial** it should be **read** to the jury.



**Source:** St. Azile v. King Motor Center, Inc.,  
407 So. 2d 1096 (Fla. 4th DCA 1982).



# Did you know . . .

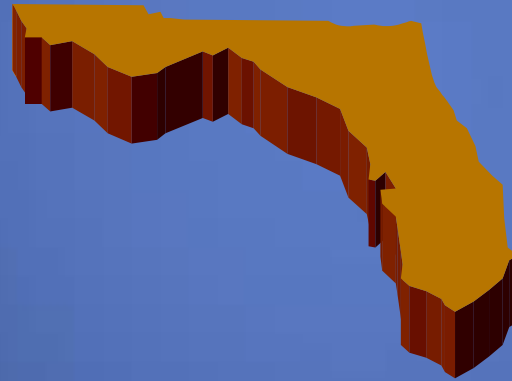
A party may instruct a deponent **not to answer** a question “**only** when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion to terminate.”



**Source:** Fla. R. Civ. P. 1.310(c); Express Inc., of Iowa v. Torres, 90 So. 3d 365 (Fla. 1st DCA 2012).

# Did you know . . .

Florida is one of few states that provide for defense discovery depositions in **criminal** cases.



**Source:** Fla. R. Crim. P. 3.220(h).

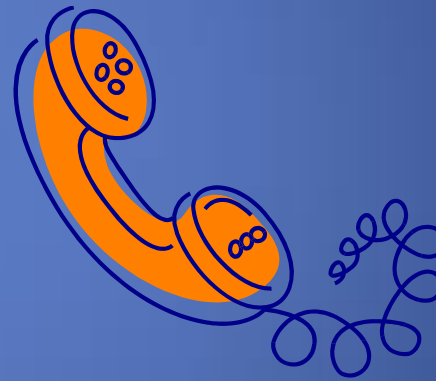
# Did you know . . .

A deposition may be used against a party **only** if that party was: **(1)** present or represented at the deposition; or **(2)** had reasonable notice of taking the deposition.

**Source:** Fla. R. Civ. P. 1.330(a).

# Did you know . . .

A **telephone** deposition may only be taken by order of the court.



Source: Fla. R. Civ. P. 1.310(b)(7); See Smith v. DRW Realty Services, 578 So. 2d 507 (Fla. 1st DCA 1991).

# Did you know . . .

A person who is **not** a party to the pending case has **no right** to attend or obtain copies of a deposition transcript.



**Source:** Palm Beach Newspapers, Inc. v. Burk, 504 So. 2d 378 (Fla. 1987)(holding that depositions are **not** public proceedings).

# Did you know . . .

A deposition to **perpetuate testimony** is allowed **only** if there is some impediment to filing the case immediately and if relevant evidence would otherwise be lost.

**Source:** Fla. R. Civ. P. 1.290.

# Did you know . . .

The proper method of compelling a nonparty witness to appear for a deposition is to serve the witness with a **subpoena**.



Source: Fla. R. Civ. P. 1.410(e)

# Did you know . . .

If a deposition is **transcribed**, the witness has a right to review the testimony given and to make **changes** in the form or substance of the testimony.

**Source:** Fla. R. Civ. P. 1.310(e); Feltner v. Internationale Nederlanden Bank, 622 So. 2d 123 (Fla. 4th DCA 1993).



# Did you know . . .

An **objection** during a deposition generally serves to **preserve** the issue for consideration by the court, but it does **not** prevent the opposing party from **obtaining** the objectionable testimony.

**Source:** Fla. R. Civ. P. 1.310(c).



## Did you know . . .

A trial judge **may** authorize a party to take the deposition of a witness even **after** the start of the trial if there is **good cause** shown.

**Source:** 5 Fla. Prac., Civil Practice § 10:6 (2014 ed.).

# Did you know . . .

A party need **not** obtain leave of court to take a deposition by **written** questions.



**EXCEPTION:** If the person to be deposed is in **prison**.



**Source:** Fla. R. Civ. P. 1.320(a).

# Did you know . . .



The consequence of a **failure** to give **notice** of taking a deposition is that the deposition may **not** be used against a party.

**Source:** Coniglio v. National Car Rental Systems, Inc., 541 So. 2d 1367 (Fla. 3d DCA 1989).

## Did you know . . .

The transcript of a deposition should **not** be **filed** in the court file as a matter of course, but **only** if the transcript is needed for a specific matter that is before the court.

**Source:** Fla. R. Civ. P. 1.310(f)(3)(A).

# Did you know . . .

A party may take the deposition of the **representative of a business** or governmental entity even if the identity of that representative is **unknown**.

**Source:** Fla. R. Civ. P. 1.310(b)(6).



# Did you know . . .

If the procedures laid out in **Rule 1.310(b)(4)** are followed, a party may record a deposition on **videotape** without obtaining permission by the court and without the consent of other parties.

Source: Rule 1.310(b)(4).

# Did you know . . .

Rule 1.310(d) grants the trial judge authority to **terminate** or **restrict** a deposition based on a showing that it is being taken in **bad faith**.



Source: Fla. R. Civ. P. 1.310(c)



# Did you know . . .

The court may award **attorney's fees** if a party fails to attend his own deposition.



**Source:** [Ruppel v. Gulf Winds Apartments, Inc.](#), 508 So. 2d 534 (Fla. 2nd DCA 1987).