Objection! Asked and Answered

I have been reviewing some deposition transcripts replete with "attorney commentary" and was wondering whether anyone out there thinks there is much value to the "asked and answered" objection.

For example, has anyone ever seen a judge rule that deposition testimony is inadmissible on the grounds that it was cumulative? Would it be better just to let the examining attorney keep asking the same question?
Is it a psychological ploy intended to discourage the examining attorney from covering the same ground hoping for inconsistent answers? Is it a court sanctioned form of coaching that alerts the witness to something?
Or is it merely a method used by objecting attorneys to stay awake?

I am curious to hear your thoughts.

Your client might answer the second question different than the first.
Impeachment issue.

Joseph D. Dang, California

Usually it is an objection that is given because the attorney asking questions is trying to trip the person up on tiny details, already asked, in hopes of obtaining contradictory information.

It was kind of the single to the other attorney to move on we know your game

The times I have seen those questions/answers thrown out were usually doctor/witness depos being read into the file and it was usually by agreement of the parties instead of judicially ordered

Erin M. Schmidt, Ohio

Well, it is used to prevent 'badgering the witness'. Usually where the attorney doesn't like the answer to the initial question.

It's one thing to ask Did you ever use the term Grebix? (or did X or Y or whatever) and witness says, No, I've never used the term Grebix, that's a nasty word to call someone.
And then ask "are you sure you never used the term Grebix? We've got reports that at a Christmas party where you were drunk last you you called my client a Grebix"? And witness says, Uh, maybe I did. In other words where someone gives one answer to a general question then is asked a more specific question and given opportunity to change it. That, normally, is not going to be badgering and I wouldn't object.

However, there've been a few times where attorney asks one question, gets answer they don't like and then either asks the same question or says "are you sure that.....repeating the same question". Even there I might let it slide, but when they start asking the same dang question the third time, I'm objecting asked and answered.

You don't like the answer you can't just keep repeating the question until you do get an answer you like. I'm objecting A and A. Lawyer doesn't' like the answer, they need to prove it some other way than simply asking again and again.

Ronald Jones, Florida

The rules of evidence do not recognize and "asked and answered" objection. "Objection, cumulative" or "Objection, badgering" is probably the better objection, depending upon the circumstances.

In cross examination, you are allowed to ask a question multiple times.
Sometimes the witness is being overly technical or deliberately forgetful.
Asking the question different ways, or with different introductions is often the only way to make sure that the witness is truly committed to that answer.

I think attorneys usually use it when they are trying to signal the witness that he's already answered it (so that the witness will not give a contradictory answer) or when they are concerned that the witness doesn't realize that this question is now stated differently, but it's no different than one asked before. Sometimes it will be used in a lengthy depo where the interrogator asked the question earlier, a lot of time and questions have passed, and now the interrogator wants to see if the answer will change -- either because the questions have refreshed the witness' recollection or he is hoping that the witness is now concerned that the evidence in the case is not going to support the original answer.

(Especially true where the witness gave an unequivocal answer (e.g., I always fasten my safety belt before I leave the driveway) but now must acknowledge that there are exceptions to that unequivocal answer that he must concede.)

Never seen it become an issue in trial.

Andy Simpson, U.S. Virgin Islands

I make that objection to indicate my frustration with opposing counsel who dwells on the same point. Often, it convinces them to move along.

Adam Sherwin, Massachusetts

My view is that it is primarily for effect during the deposition, rather than for use to keep testimony out at trial.

If the questioner keeps repeating a question, with or without slight changes, it can border on harassment, and it's generally improper. The objection can serve as a "shot across the bow" of the questioner, to show that you're going to keep a tight rein on the questioning, which may keep him honest and the deposition shorter (or not). The objection also can serve as a flag to the deponent that he's already answered this question, and shouldn't feel as though he needs to come up with a new answer.

Likely most of what the defending lawyer says at a deposition is designed to impact the deposition itself, not purely to preserve objections, because most every important objection is preserved for trial

Patrick W. Begos, Connecticut

This is often why it is used. It also makes the asking attorney nervous that he might not be refining his question like he might actually be doing, as when one asks repeated questions with a little more detail and a little more specificity as the deponent slowly gives up information.

In general, especially at depositions, I think objections are made to try to push an attorney off his game or derail his train of thought.

Bruce Wingate, New York

It can serve to (a) express frustration with the examining attorney that he's treading over the same ground repeatedly and it's time to move on; or
(b) remind one's own client that he's been asked the question already and should answer it the same way as before; or (c) like any objection, to disrupt the other attorney.

Although lots of attorneys raise it, strictly speaking, it's not a permissible objection at all under the federal rules; it's not an objection as to form. YMMV as to your state's rules. But it's particularly improper when an attorney uses it even though the deponent _hasn't_ answered the
question:

Q: "Did you ever tell my client that he was being fired for poor performance?"
A: "He was a terrible performer. He never met his quotas and he was late to work."
Q: "Please listen to my question: Did you ever tell my client that he was being fired for poor performance?"
Defending attorney: "Objection; asked and answered."

That really makes me want to punch the opposing counsel.

To answer your question directly: the objection has nothing to do with admissibility. True, cumulative evidence can be excluded at trial, but that doesn't make it improper to ask a question more than once at a deposition. (And of course it can't be cumulative if the answers are
different.)

David M. Nieporent, New York

During a deposition that objection, along with MANY others, are not proper and could be viewed as coaching by counsel or otherwise interfering with the deposition.

During a deposition the only objection that would typically be permitted would be as to form. All other objections are preserved until trial.
If there is an objection to the deposition testimony not as to form it would be raised when the deposition is going to be entered. It would then be addressed in some way.

If you want testimony to be admitted from the deposition then you need to be sure that the way you ask the question, etc. would not be objectionable.

Many attorneys are not going to make an issue over this unless it becomes egregious, or interferes with the taking of the deposition. A deposition transcript (or several) with many improper interruptions from OC based on objections that do not need to be stated could become problematic for OC if the issue is raised. During a deposition similar questions may be permissible to clarify, confirm, or hone in the witness's testimony. Testing it for consistency and veracity. At trial you will likely get one shot at a question and the answer it what it
is. During the deposition each rephrasing, or inquiry to confirm or to
just come to an issue from a different direction, has its use to lead to the admissibility of relevant evidence. The test for proper questions is not the same during a deposition as it is at trial.

I had an OC that was objecting too much, clearly to signal to interrupt my flow, so I started asking that the issue with the form be stated for the record. My reason was that if it was a form issue, then I needed to know the basis (since it was not obvious) so I may correct it here and now. It became clear that there were no issues with form, as the basis recited was not for form, so I pointed out on the record that ONLY objections to form are permissible and otherwise the ONLY reason to object would be to signal client or otherwise interrupt the deposition.
That stopped the objections.

Phil A. Taylor, Massachusetts

The discusson on this yesterday led me to do a bit of reseearch; and it appears that what is or is not a 'proper' objection depends on your jurisdiction, whether state or federal and may even depend upon local practice. See, very generally:

https://www.floridabar.org/divcom/jn/jnjournal01.nsf/8c9f13012b96736985256aa900624829/0c203d9001565cf585257fdc0068bf3b!OpenDocument

Though it is from Florida Bar Journal he is discussing almost exclusively federal decisions; and he cites to cases for all of this. It's an interesting read;

Form Objections

Many (and probably most) lawyers have been trained that the only proper deposition objection as to the form of a question is simply, "Objection, form," or something very similar. The Abbott Labs court, however, stated that objecting to "form" is like objecting to "improper" in that it does nothing more than vaguely suggest to the questioner that the opposing attorney takes some issue with the question.12 The court explained that "form" refers a broad category of specific objections, and, therefore, "saying 'form' to challenge a leading question is as useful as saying 'exception' to admit an excited utterance."13

According to the Abbott Labs court then, unspecified "form" objections do not actually alert the questioner to what the specific alleged defect is, preventing the questioner from immediately curing the objectionable part of the question.14 Instead, the questioner must ask the objecting lawyer to clarify, which can sometimes take substantial time and increases the amount of "objection banter" between the lawyers.15

The court in Henderson v. B&B Precast & Pipe, LLC, 2014 WL 4063673 (M.D. Ga. 2014), took a similarly tough stance on "form" objections during depositions in that case. The court specifically stated, "This objection is meaningless standing alone and is contrary to what is contemplated by the Federal Rules of Civil Procedure."16 Judge Land in Henderson explained that simply objecting to a question by stating "form" probably does not preserve the objection because it does not indicate what is wrong with the question, depriving the questioning lawyer the chance to cure the alleged issue during the deposition.17

The Henderson court further expanded on this concept, noting that allowing a lawyer to file an extensive brief after a deposition elaborating what was wrong with the form of the question when the lawyer failed to give the questioner any clue as to the deficiencies of the question during the deposition would be inconsistent with the federal rules and contrary to resolving an action in a speedy and inexpensive way.18 The court went on to overrule every "form" objection when the objecting lawyer did not elaborate further to apprise the questioning attorney of the problems with the questions so that he could reasonably fix any issues by rephrasing the question during the deposition.19

Similarly, in Ross v. Baldwin Cty. Bd. of Educ., 2008 WL 2020470 at *3, n.4 (S.D. Ala. 2008), the court overruled objections to testimony set forth in motions in limine because the attorney did not properly object during depositions, instead relying purely on "form" objections without further clarification as to the basis of the objections. In Mayor & City Council of Baltimore v. Theiss, 729 A.2d 965 (Md. Ct. App. 1999), the appellate court affirmed the trial court's ruling that all "form" objections stated during

an expert witness' deposition were waived because such nonspecific objections did not allow the attorney asking the questions to reasonably address the problem and cure the objectionable question.20

Courts are not entirely consistent in their views on form objections. In fact, a few courts (none in Florida, however) require lawyers to state nothing more than unspecified "form" objections during depositions.21 Even judges within a particular district or circuit may not be consistent. For example, while the Middle District of Florida's Civil Discovery Practice Handbook states that the phrase, "I object to the form of the question," is acceptable and sufficient to preserve all form objections,22 I was recently chided by a U.S. district judge for the Middle District of Florida for doing just that during a deposition. I was then advised to read the Abbott Labs opinion, and to refrain from making unspecified "form" objections during depositions.

While objecting generally to "form" during a deposition should preserve form objections, I suggest, as explained in more detail below, that objections should be stated with a brief explanation as to the basis of the objection, such as "objection, leading."

Proper Objections

Courts have endorsed a number of proper deposition objections. To be clear, however, even though the following objections are valid, witnesses must still answer the question posed to them even if the questioning lawyer does not rephrase the question or otherwise fix the objectionable portion of it in both federal and Florida state courts.23

• "Objection, leading" — An objection that a question is leading goes to the form of the question and is, therefore, proper during a deposition.24 In fact, the failure to object to leading questions during the deposition generally acts as a waiver of the objection.25 The specific phrase, "objection, leading," has been approved previously, even by a court that limits all other form objections to, "objection, form."26 That court sustained the objection that questioning lawyer's questions were leading after the deponent's lawyer stated during the deposition that he had "been very lenient about leading [questions], but [I] would ask that you let the doctor testify as opposed to you," calling it an objection "served on a platter of civility."27 The objection to leading questions is therefore appropriate.

• "Objection, compound" — If a question asks multiple questions at once, it is proper to object that the question is compound.28 These questions are "ambiguous and confusing" for witnesses, and so courts generally sustain these objections if the

problem is not corrected during the deposition by the questioning attorney after an objection has been made.29

• "Objection, assumes facts not in evidence" — An objection that a particular question assumes facts that are not in evidence is appropriate during an objection.30 An example of when this objection is appropriate is in response to questions, such as, "When did you stop discriminating against the plaintiff?," when the witness has clearly never admitted to discriminating against the plaintiff.31

• "Objection, asked and answered" — When a question has already been asked and the witness has already answered the same question earlier in the deposition, the "asked and answered" objection is proper.32 Employing this objection can be somewhat tricky in some situations, however, such as when the question that was allegedly already asked was asked hours prior to the current question, making it difficult for either attorney know whether the question has in fact already been asked and answered. This objection is also difficult to assess in cases involving multiple parties or particularly complex claims, since an earlier question could have only been similar to the one being asked and objected to. But assuming that the same question (or a very similar iteration of it) has already been asked and answered, this objection is appropriate during a deposition.

I think the article is worth a read.

So, as I said, it depends.

Ronald Jones

"Asked and answered" sounds like an objection to form to me. It is also an objection that the questioner could correct upon hearing the objection. Therefore, failure to interpose the objection at a deposition might waive it. At trial, when deposition testimony is read, objections should be read with the questions and answers, unless the objector stipulates otherwise. Before reading the answer, the judge should rule on the objection as if it were made at trial.

Steven Finell, California

I am inclined to think the point is judicial economy, not wasting a client's time, for which they are being billed, nor the court's.

Ymmv

Robert Link