



This form by Leonard Bucklin,
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Why you need a form “in your pocket” to prevent the taking of a deposition.

As an attorney for a party, the only legal remedy you have to protect your client against an adverse party’s subpoena or notice of deposition is — a motion to suppress the deposition. The law is clear on two points:

1. The witness has to obey the subpoena (a party has to open the notice of deposition of the party’s own deposition).
2. Once the witness is before the court reporter pursuant to the subpoena, the witness has no legal right to refuse to testify on the ground simply because he/she objects to the deposition itself, or because there is a motion for protective order still pending before the court.

Without a ruling (before the witness appears pursuant to subpoena), you have lost the chance to prevent the testimony going forward. The only grounds left to your witness to assert for not testifying are grounds of evidentiary privilege.

Thus, your client's only protection against the taking of a deposition is a speedily prepared motion for protection. If the deposition notice specifies a date only a week away, you must prepare the motion fast, serve it fast, file it fast, and get the court to hear the motion. That does not leave you much time to get it all accomplished.

Equally important, preparing and serving your motion is not enough. Your motion must be heard and ruled upon before the noticed deposition date. If your motion is not heard and ruled upon, you have no protection to the deposition going forward, and your motion becomes moot. See, e.g., *Bohmfalk v. Linwood*, 742 SW2d 518 (TX App. Dallas 1987)(counsel's failure constituted a waiver of any objection to taking of the deposition.). In short, you have to move doubly fast, because the motion must not only be prepared, served, and filed, but also must be heard before the noticed deposition date.

Short time and speed needed. That's why you need a form motion for protective order, always in your office computer, always ready for quick use when you need it. Power litigators have prepared or purchased a form to suppress a deposition, and have the form available, before the day they a motion to suppress the deposition.