

ITEM 6.03 | PROPER RESPONSES TO IMPROPER CONDUCT

If opposing counsel exhibits any of the behavior described above, the proper response is to object and concisely describe the improper conduct. Counsel should exhaust all efforts to resolve a dispute that threatens the ability to proceed with deposition.

If such action fails to resolve the issue, many judges permit counsel to telephone the court for a brief hearing when irreconcilable issues arise at deposition. Counsel may want to take a break during the deposition and call chambers, requesting a brief hearing to resolve the matter. This is especially true if the deposition is out-of-state and would be costly to reconvene. It helps to know the judge's preferences in this regard, but judges generally are aware that the use of this procedure—if not abused by counsel—provides an excellent opportunity to attempt to resolve issues on the spot before they develop into more costly and complex proceedings after the fact. However, it is important to note that these emergency hearings place the judge in a difficult position. Having not personally witnessed the behavior and without the aid of a deposition transcript, the judge's ability to issue a thoughtful, informed order may be limited.

A party or witness who reasonably believes that a deposition is "being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the witness or party," or that "objection and instruction to a deponent not to answer are being made in violation of rule 1.310(c)," may move to terminate or limit the deposition and immediately move for protective order. The most appropriate action would be to make such motion orally and concisely on the record at the time of the deposition, and follow promptly with a written motion for protective order. A copy of the deposition will need to be filed with the written motion. Rule 1.310(d) specifically provides that the taking of the deposition shall be suspended upon demand of any party or the deponent for the time necessary to make a motion for an order. All phases of the examination are subject to the control of the court, which has discretion to make any orders necessary to prevent abuse of the discovery and deposition process.

*Trial Lawyers Section of the Florida Bar
Conference of Circuit Court Judges
Conference of County Court Judges*

