

# THE TRUTH ABOUT DEPOSITION SUMMARIES

## Deciphering the Process

What used to happen with a deposition transcript? A paralegal summarized it, and everyone on your litigation team knew exactly what happened in that deposition. Today, increasing bill rates and client scrutiny of litigation expenses have led some firms to abandon this once standard practice. Indeed, new technologies for managing litigation have taken the place of the deposition summary for many firms, regardless of their utility.

As a result, deposition summaries are becoming something of a dinosaur and many paralegal managers find themselves getting fewer and fewer requests for them. Whether your firm only does summaries when a case is going to trial, or you have abandoned the practice of summarizing depositions altogether, your paralegals may be impacted more than initially thought.

### 1. FINDING THE NEEDLE IN THE HAYSTACK

Does this scenario sound familiar? Your paralegal is assigned to a case involving a plant explosion, and the partner insists that a key witness denied being on site at the time of the explosion and asks the paralegal to find the reference. Simple enough -- the deposition transcript has already been loaded into Summation. The paralegal conducts text searches using key words and

phrases, such as "explosion," "site," "deny," "present." Yet hours later the paralegal has still not found the testimony. Continuing the search, the paralegal pores through the deposition transcript, spending even more hours trying to find the reference that the partner swears is there. What happened?

Summation, Concordance, LiveNote, and other products have revolutionized the way law firms handle litigation, but they are not always the best tools for pinpointing testimony. Witnesses and attorneys rarely converse in legal terms. In the above example, this may have been the testimony the paralegal could not find through text searches:

Q: What was your typical schedule at the plant?

A: 8:00 to 5:00.

Q: Did you take any breaks?

A: Yeah, we got an hour for lunch and I would head home.

Q: Did you ever stay at the facility for lunch?

A: Not if I could help it. Not that I can remember. That's why I missed everything.

Q: Because you were at home?

A: Yeah.

Q: But you came back and helped?

A: I came back from lunch just like I always did and saw the commotion and ran inside.



I have surveyed dozens of paralegals and asked them what they would do in a similar situation. Almost all admitted that they would have spent hours doing text searches before giving up and reading the transcript word for word, flagging potential text with post-it notes. How's that for your cost-effective technology?

Deposition summaries have page and line references as well as topic headings. The relevant testimony could be pinpointed in minutes.

### 2. ORGANIZING MULTIPLE DEponents

Consider another typical assignment. You have just assigned a paralegal to an insurance coverage case that the firm inherited from another firm who conflicted out of the case. It deals with insurance coverage for an underlying toxic tort case where dozens of witnesses have already been deposed. The partner asks the paralegal to put together a matrix of the deponents and key elements of their testimony to determine

whether a new round of depositions is warranted.

The attorney gives the paralegal five key issues he or she wants included in the matrix along with information regarding the type of witness (fact or expert), current employer, and current position. If summaries have been prepared, the paralegal's task is much quicker than if they are combining reading the transcript with text searches. In addition, by using summaries, at the end of the project, the paralegal has a good understanding of what each witness said without having to read through thousands of pages of text.

These are just two examples of the types of tasks paralegals are asked to undertake all the time. Often, they are not working on only one case, nor are they only working for one attorney. The litigation paralegals I am referring to here are often the highest billers in your firm and the ones coming to you for addition-

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## DEPOSITION SUMMARIES

*Continued from page 11*

al help on their cases. They have document productions to deal with, war rooms to set up, and briefs to file, all while trying to get their attorneys information they need, often in similar scenarios as those described above. For cost and time issues, on first glance it makes sense to no longer have them do summaries. Yet the fact remains that combining deposition summaries with the advanced search engines available today can streamline the efforts of your litigation paralegals.

Still skeptical? Imagine you are back in college. You have an upcoming test on a piece of literature you have not had time to read. One of your classmates is willing to share their notes of the lecture. You also have downloaded the entire book and can search it on your computer. Lastly, you have the Cliff Notes. Do you feel prepared? What if you did not have the Cliff Notes? Using Live Note and Summation/Concordance are indisputably useful, but your paralegals may spend a lot of time text searching testimony that cannot give them the same level of context.

## DEPOSITION SUMMARY STRATEGY

Sometimes, though, it's not just the question of how the deposition summaries can help your litigation team. You know it's valuable and necessary, but how are you going to manage getting the work done? Most of the time, your litigation paralegals are probably already working at maximum capacity. But, if you have underutilized paralegals in your group, deposition summaries are a perfect thing to increase their hours. This is a win-

win. Your case manager is freed up while still getting completed work product that they need and your underutilized paralegal has more billable work.

If the above is not an option, consider outsourcing. If you do not have the time, money, or resources to devote paralegals to deposition summaries, outsourcing can be a lifesaver. Not all deposition summary providers are equal and there are several components you should consider when determining whether to outsource and to whom.

### 1. RATES

Most deposition summary services offer billing by the page rather than by the hour. Billing in this manner keeps your costs fixed regardless of how long it may take to summarize each deposition. In addition, confirm what the rate includes. There may be surcharges for overnight couriers, expedited service, or supplies. Know what, if any, surcharges you will be invoiced.

### 2. QUALITY

Your deposition summaries will not help unless they are accurate and concise. Your provider should include a quality control process that checks the summary for consistency of format, accuracy, length, and typographical errors. The quality control process works best if someone other than the individual who completed the summary conducts the final review. It is difficult, if not impossible, to carefully review one's own work.

### 3. SECURITY

Consultants should sign a confidentiality agreement and the service provider should have mechanisms in place to avoid conflicts of interest. The provider should facilitate

additional conflicts checks or specialized confidentiality agreements at your request.

In addition, consultants should work on secure computers at the provider's office or through a secure web-based application that allows work product to be captured on-line in a password-protected environment. If consultants work using their own computers and save the work product to their personal hard drives, you may want to consider additional measures to protect the work product.

### 4. CREDENTIALS

Seek providers who screen their candidates. They should interview, verify education, check references, and train and test them. Paralegals, law students, attorneys, and reporters are excellent consultants. Remember, you are seeking an accurate, concise summary, not someone's interpretation of the testimony.

In addition, determine whether you can request consultants with specific credentials or backgrounds. You may have a case in which a scientific background would be helpful for summarizing expert testimony. Conversely, you may want to exclude certain consultants. You may want any qualified candidate that lives outside of your locale because your case has been high profile and you prefer that no one from that area work on it.

### 5. CUSTOMIZED FORMATS

You should be able to choose either a page-by-page summary or a topical summary and review samples of each. In addition, the provider should accommodate such other formats that you or your outside counsel request. Ask for a cus-

tomized sample as well to determine the quality of the work product, and how well the provider will meet your specific needs.

### 6. VOLUME CAPABILITY

Ask your provider about their capacity. How many people do they have available to perform the work? The provider should be able to give you a realistic view of how many depositions they can do at one time and their standard turn-around time. Determine whether they have an expedited service and whether there is a surcharge for that service.

### 7. END PRODUCT

The provider should accommodate the way you would like to receive your deposition summaries. If the summaries will be loaded into an electronic database, determine whether they can customize the file for you. You should be able to receive the completed summaries via e-mail, CD, hard copy or other format that you request.

Whether you outsource or use your own staff for deposition summaries, consider the real cost of doing without them. Most veteran attorneys who began their practice using deposition summaries have not warmed to the trend of doing without them, and for good reason. Reviewing depositions through text searches alone can be more time consuming, less accurate, and more costly than if your legal team uses deposition summaries in conjunction with search engines. Given the quality, timeliness and security of work product available from today's leading providers of outsourced deposition summaries, a return to summarizing depositions, as a standard practice may be appropriate.