

## Cross-Examining the Plaintiff in Employment Harassment and Discrimination Cases

**A live 90-minute CLE webinar with interactive Q&A**

Webinar

08.11.2020

### **When:**

1:00pm-2:30pm EDT, 10:00am-11:30am PDT

### **Sheppard Mullin Participant:**

**Stephen E. Fox**, *Partner*, Sheppard Mullin Richter & Hampton

This CLE webinar will provide employment trial lawyers with the tools to handle the challenging task of cross-examining a plaintiff/victim claiming harassment or discrimination. The plaintiff/alleged victim's deposition is typically the pivotal testimonial event in the case. Trial counsel is often stuck between a rock and a hard place: push aggressively, and the plaintiff/victim may garner sympathy; hold back too much, and the defense suffers.

### **Description**

Rare is the employment law case that does not come down to the plaintiff's testimony. Whether in a deposition or during trial, counsel must know what to ask and how to ask it. Counsel must decide **whether the deposition or trial should be the focus** and how to prepare for the substance of either or both.

As the plaintiff's lawyer, you want to make sure the plaintiff is prepared to discuss all acts of alleged discrimination, and the facts showing the adverse actions are discriminatory. Moreover, the plaintiff must prepare to present evidence to rebut the defendant's defenses, evidence of emotional distress damages, and evidence of mitigation of damages.

If it is likely a case will proceed to trial, counsel's deposition of the plaintiff may center on opportunities for impeachment at trial. However, counsel's plan to impeach the plaintiff must be nuanced to **present a vigorous defense without alienating the jury**.

Listen as our panel of courtroom veterans discusses the factors to weigh when choosing a deposition-focused or trial-focused approach, how to prepare for either, and an appropriate tone to maximize the ability to discredit the plaintiff without engendering jury sympathy.

### **Outline**

1. Differences between deposition cross and trial cross

2. Witness preparation
  1. Information gathering
  2. Legal research
3. Deposition conduct
  1. Learning the plaintiff's case
  2. Getting admissions
  3. Setting up impeachment
4. Trial issues
  1. Know the answer to every question before asking
  2. Lines of attack
  3. Discrediting plaintiff testimony without fostering backlash sympathy

## Benefits

The panel will review these and other critical issues:

- Whether to make deposition or trial the venue for plaintiff's cross-examination
- Substantive preparation and planning for the plaintiff's deposition
- Strategies for fortifying the plaintiff's case during his or her deposition
- Strategies for discrediting the plaintiff without provoking anger at the defendant(s)

## Other Panelists:

- **Ashley Allyn**, *Of Counsel*, Gibson Dunn & Crutcher
- **Lynne Bernabei**, *Partner*, Bernabei & Kabat

Click for more information and registration.

## Attorneys

Stephen E. Fox

## Practice Areas

Labor and Employment