

PREPARING THE WITNESS FOR A DEPOSITION

GENERAL OVERVIEW

A deposition, although not occurring in the courtroom, is a formal judicial proceeding at which sworn testimony is taken from a witness in the form of a question-and-answer session. As a deponent, you will be asked questions by the opposing attorney and your answers will become part of the official record of the case.

Deposition testimony is every bit as important as live testimony at trial. First, it is testimony given under oath and thus subjects the witness to the penalties of perjury. Second, it is testimony which is intended to be used at trial, and can be used against a witness if his or her story changes. As such, it is imperative that you, the witness, take your deposition seriously and prepare yourself adequately.

Your deposition will likely take place in your attorney's office, the office of the opposing attorney, or some other neutral site. Those present will be you, your attorney, the opposing attorney, the court reporter and, if there are other parties to your dispute, their attorneys.

The purposes of a deposition are three-fold:

- it is a chance for the opposing attorney to meet you and see what kind of impression you will make on a judge or jury
- the other attorney wants to know what you will say in court
- if possible, the opposing lawyer wants you to say things that will hurt your case and help his or her case

Treat the deposition like an important job interview.

APPEARANCE AND DEMEANOR

Your appearance and demeanor during your deposition is important for several reasons. First, your deposition may be videotaped and could be played to the judge or jury at trial. The transcript of what you say could certainly be read to the judge or jury. Second, it is important that you project yourself to the opposing counsel as a capable and confident witness, and someone who knows what they are talking about.

For these reasons, you should dress professionally and conservatively, and you should be well-groomed so as to present yourself in the best possible light. Your demeanor should be pleasant but professional and, when possible, address the opposing attorney as "sir" or "ma'am." Do not joke or make inappropriate comments.

RULES FOR THE DEPOSITION

1. Tell the Truth

It is imperative that you are truthful at all times during your deposition. Remember, you will be under oath and, if it is shown that you were less than truthful, you may be guilty of perjury. Lying during your deposition can only be harmful. It is better to give a truthful but painful answer than to offer false testimony.

2. Do Not Argue or Get Angry

Whatever you do, do not argue with or get angry at the opposing counsel. If you do, then the attorney has won. When angry or argumentative, you are more likely to speak without thinking first, or make a statement or comment you wish you could take back. Remain calm and collected, even if the opposing attorney gets riled up or upset. That way you will avoid letting the attorney use your emotions against you.

3. Do Not Guess the Meaning of a Question

Be sure you know *exactly* what the attorney is getting at before you answer the question. Do not speculate. If you are at all unsure, ask the attorney to rephrase the question, and keep asking until you are certain you understand.

4. Do Not Volunteer

Just answer the question. Make sure that once you've answered the attorney's question, you *stop talking*. While it is important to be truthful, it is also important not to give more information that the question calls for. Often times, witnesses get caught up in talking about a particular subject and accidentally give out information that the opposing attorney might never have thought to ask about.

5. Never Interrupt the Question/Pause Before Answering

Let the attorney finish his or her question before you answer then take a second to think before you answer. This one is important for several reasons. First, you want to make sure that you give yourself time to think about the question, identify any pitfalls, and consider your response before blurting out an answer. This can be difficult because in everyday conversation, it is common to anticipate a person's question and begin answering before they are through. Don't fall into that harmful habit during your deposition. Another reason it is important to pause is that it gives your attorney time to object to the question for the record if he/she so desires. Always pause for a second or two after the conclusion of the question before you start your answer.

WATCH OUT FOR TRICK QUESTIONS

A. Compound Questions

These are questions that contain two or more questions disguised as one. By giving an answer to one, you may accidentally be binding yourself as to the other. To spot a compound question, listen carefully to the entire question and determine whether the attorney is really making more than one inquiry.

For example:

"Wouldn't you agree that the stop sign was clearly visible and that it had been raining for several hours at the time of the accident?"

If you suspect that a question may be compound, say to the attorney, "That sounds like more than one question, would you mind breaking it down for me?" Keep asking until you feel comfortable that only one question is being asked.

B. Questions that Assume Facts that Aren't True

Be careful that the opposing attorney does not try to slip a false statement in with the question. By answering the question, you may inadvertently be making an admission as to the statement.

Consider, for example:

“After the car in front of you put on his turn signal, describe to me the chain of events that led to the wreck.”

If the driver in front of you did not really turn on his signal, then clarifying that fact could be dangerous. Don't get caught up in the question and forget about the statement. If you think a question has assumed a fact that is not true, correct the attorney about the fact before you begin answering the question. “First, Mr. Smith, let me make it very clear that the driver in front of me never turned on his turn signal, so it's not really possible for me answer the question the way you asked it. I would be happy, however, to describe to you the events that led to the wreck.”

C. Summary Questions

Beware of the opposing attorney asking a blanket question that summarizes your testimony and then asking you if you agree with his statement. “Let me make sure I understand, you're saying that a, b, c, d, x, y, and z. Is that right?” Often times, the attorney's summary is inaccurate and thus you may be agreeing to something that is not true. Make sure you listen carefully to what the attorney is saying, and of you feel like he/she has not fairly characterized your testimony, do not agree with the attorney's statement.

HOW TO PREPARE FOR A DEPOSITION

You should do your homework before your deposition and:

- Review the petition or counter-petition you have filed with the court.
- Review your discovery answers to interrogatories, requests for disclosures and requests for production.
- Try and get dates and the order of events straight in your mind.
- Review any transcripts of earlier hearings and listen to any tapes you made or the other side produced.

DO'S AND DONT'S DURING THE DEPOSITION

DO

Feel free to say “I don't know” or “I don't understand.”

Ask the opposing attorney if he/she has a document that might help refresh your memory.

Treat the opposing attorney with respect.

DON'T

Use phrases like “In all honesty” or “I'm doing the best I can.”

Use words like “Always” or “Never.” (If you do, the opposing attorney need only find one exception to make you out to be a liar.

Ask the attorney to repeat the question if you are unsure about it's meaning.

Ask for a break if you need one. This can be a good time to consult with your attorney.

Answer questions with "yes" or "no" if the question calls for it.

Be lulled into a relaxed conversation where you might let down your guard.

Give long narrative answers where you might accidentally provide more information than you were asked for.

Look to your attorney for answers in the middle of a question.

Use words like "uh-huh" or "mm-hmm," since they can be mis-interpreted by the court reporter.