

DEPOSITION TIPS

1. **Listen carefully the question and make sure that you understand it.** You cannot accurately answer the question if you do not understand it. If you do not understand the question, ask the questioner to repeat it, rephrase it, say it more loudly or do whatever else is necessary for you to understand the question. If you do not understand words in the question, ask the questioner to define them. Do not proceed until you are sure that you understand the question, even if you have to ask for clarification several times. If you are still not sure that you understand the question, a good technique is to repeat the question that you are answering as part of your answer. "If your question is ... my answer is"

2. **Pause momentarily before answering the question.** This serves three (3) purposes. First, it allows you to gather and organize your thoughts. Simply stating the answer to a question – not your entire thought process in arriving at it – will make you a more effective witness. Second, your pause allows me to object to the question, if that is appropriate. If you have already blurted out an answer, my objection will do you no good. Finally, the pause allows you to maintain control of the pace of the questioning, a very empowering thing! The questioner cannot go any faster than you will allow, so take control by taking your time!

3. **Honestly answer the question.** If you remember no other rule, remember this one. It is as simple as this.

... **but only answer the question.** Figuratively speaking, if you are asked what time it is, don't tell the questioner how to build a watch. Just answer the question! Volunteering information invites trouble. You may say something that will give the questioner valuable information to use against you. At the least, it will prolong your deposition – and make the deposition transcript more lengthy and expensive – while the questioner explores the volunteered information.

Many witnesses at depositions mistakenly believe that their purpose is to tell the whole story of an incident or convince the other side that his/her belief is correct. That is wrong. A witness'

purpose is to answer the questions that are asked. Period. If the questions do not bring out the entire story, that is the questioner's problem, not yours. The questioner will learn the rest of the story – perhaps to his or her dismay – when you testify in court.

4. **Don't guess.** If you don't know the answer to a question, you should say, "I don't know," or "I don't remember." This is far better than guessing, possibly being wrong, and damaging your credibility.

5. **Be as specific as you can, but no more so.** This is related to the preceding rule. If asked, for example, the date of an occurrence, and you recall it exactly, you can say "June 16, 1995." However, if you do not recall the exact date, be only as specific as you can by saying something like "June, 1995," or "the summer of 1995." Make it clear that you are testifying only as well as your memory will allow by using terms such as "approximately" or "about" or "as best I can recall..." Be prepared for very detailed questioning and answer as specifically as possible without guessing.

6. **Never become angry or argue with the questioner.** Contrary to what many people think, most questioners are polite. However, even if the questioner is not polite, you must be. Being polite in the face of rude behavior makes you an even more effective witness.

7. **Do not be intimidated by the questioner's manner or the way that the question is stated.** As I just said, most questioners are polite. However, occasionally, a questioner may have a cynical look on his or her face, speak with a challenging tone, use aggressive body language by leaning toward you, or begin a question with something skeptical like "Do you expect us to believe that" If this happens, calmly and honestly answer the question.

Do not be intimidated or influenced by the questioner's manner. Remember that the result of a deposition is a printed transcript of the questions and answers. Unless it is a videotape deposition, things like tone of voice, facial expressions, body language and the like will not show on the transcript. Train

yourself to focus on the question and give an honest answer to it. Period. As you are answering, picture how your answer will appear in the transcript. Be unaffected by anything but your desire to honestly answer the question.

Don't let the questioner put words into your mouth. Listen carefully if there are introductory portions of the questions that you are asked. If there is a "half-truth" or information that you do not know, challenge the half-truth or state that you do not know whether the information stated is true. Use your own words to state a truthful answer.

8. If you are asked about a document, which is available, read it before you answer. Do not comment about the document until you have read it carefully.

9. If you make a mistake... Do not become upset if you make a mistake. As soon as you realize that you made a mistake during your testimony, correct the mistake. Say something like, "I would like to go back to the question about.... I stated that..., but I now remember that"

10. Don't try to guess the "right answer." Don't try to second-guess the questioner. Just as you have an advantage because you know the facts of your case better than the questioner – that is, if you have done your homework, you do – you will not know the law of the case as well as the questioner. You will not be able to guess what the purpose of questions is or guess what is the "right answer." The right answer is the honest one. Be prepared for the questioner to elicit some information that helps the questioners' case and hurts yours. That is normal and natural. There are, indeed, two sides to every case. Even though the other side has evidence – even some of it from you – that helps its case, you will still prevail if your evidence is stronger than the other side's evidence.

Depositions generally are methods of fact finding for the other side, which means that a wide array of topics will be addressed. Be patient. You need to prepare for a long day, and instead of focusing on the end of the deposition, focus on a shorter time goal instead. For example, focus on one hour at a time, and plan on asking for a break every hour. These periodic

breaks will allow you to regroup and be focused for the next hour of questioning.

Generally, depositions do not make or break a case; however, they can be very helpful tools for an attorney. If you follow the tips above and pace yourself, your deposition will go much better.