

PREPARING FOR YOUR DEPOSITION

Introduction

This guide will help you prepare for your deposition, a routine procedure lawyers use to gather information. Knowing the basics of who will be at the deposition and how the process works is the first step in making you feel more confident and comfortable.

Remember, the answers you give at your deposition will form a document of sworn testimony that can help or harm your case. Follow the guidelines given here, apply them to your own circumstances, and discuss any questions about the process with your attorney.

Having your deposition taken may seem a bit threatening at first, but you will find yourself a lot more relaxed and in control if you know what to expect.

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You should read this brochure before attending your deposition. Do not take this brochure to your deposition.

What Happens at the Deposition

At the deposition, you will be giving testimony under oath. You will be asked many detailed questions about your case, and your answers will be recorded. The record of this process forms a document that will be sent to attorneys representing both sides. Portions of the deposition may be read aloud in court, especially when the opposing attorney is trying to show contradictions between your deposition and your testimony in court. This is called impeaching the witness.

What is the Purpose of a Deposition

A deposition is a routine procedure attorneys use for gathering facts and information about a case. It is an attorney's ethical responsibility to learn all the facts about a case, and a deposition is one method used. Just as the opposing attorney will be asking you many questions, your own attorney may be questioning the other side's witnesses. In this way, much of the information about a case is available to both sides.

The deposition is a chance for both attorneys to watch what you say and how you say it. This helps determine whether you will be a believable witness.

The deposition gives an opposing attorney a chance to look through your testimony for admissions statements and facts that might weaken your own case and inadvertently strengthen the opposing party's case. These admissions may later be brought out in court, along with any contradictory statements you might make.

Who Will Be There

Of course, you will be there in your role as deponent, the person answering questions about the case. At least three other people will be in the room where the deposition is taken: (1) your own attorney, who will be there to see that your rights are protected; (2) the opposing attorney, who will ask the questions and who is there to learn as much as possible to benefit his or her own client; and (3) the court reporter, who will administer the oath and make a written document of your statement. It is possible for others to be present.

Your deposition will probably be taken in a lawyer's office. An empty courtroom may also be used if it is the most convenient place for everyone.

What Do You Have to Do

Dress neatly and carefully; as you would for a business meeting or church social. Avoid anything flashy or uncomfortable. If you are uncertain about what to wear, ask your attorney for help.

Be polite to everyone but not overly friendly. Try to relax but do not get too relaxed. You will need to be attentive to the proceedings. If you find that you are getting too tired to listen and respond carefully; ask for a break.

You have three main responsibilities: (1) listen carefully; (2) be sure you understand what is being asked of you, and (3) answer truthfully.

Your responsibilities are not as simple as they sound. You will answer the questions a lot more easily if you do not let yourself feel pressured and if you take your time. Remember that while you must tell the truth, you do not have to know the answer to every question nor are you expected to know all the facts of the case.

Avoiding Common Mistakes

You want to be the best witness possible and do everything you can to help your own case. Some common, simple mistakes can undermine the testimony of the best-intentioned witness. Here are some guidelines for avoiding these mistakes.

Stay Within the Limits of the Question

Give a complete answer to a question, but do not volunteer additional information or elaborate unnecessarily. Remember, you are talking to the opposing attorney and any extra information you reveal may be used to weaken your case.

If you are thinking through the details of a question in order to give a simple answer, think silently; not out loud. Remember, your testimony results in a written document. Any pause while you think through your thoughts will not be recorded, and you will avoid giving unnecessary details.

Be Forthright and Truthful

Even if you think your answer might harm your case, do not be evasive. The facts will come out anyway and a forthright answer will make you look better than an answer that hides or softens the facts.

Remember, a deposition is not just a chance to gather facts; it is also time to establish your credibility as a witness. A direct and honest statement of a harmful fact is likely to make the rest of what you have to say that much more believable.

Often an opposing attorney will ask you whether or not you have discussed your testimony with your attorney before the deposition. Deponents often worry that admitting that they have discussed the case will make them look bad.

There is nothing wrong with discussing your case with your attorney, so do not let the opposing attorney make you feel uncomfortable about admitting that you did.

Should the opposing attorney go further and ask you if your lawyer told you how to answer questions, just say that your attorney advised you to answer the questions to the best of your ability and to tell the truth.

Avoid Guessing at the Facts

When asked a question, most of us want to give a helpful response. However, it is not at all helpful to your own case if you let the opposing attorney lead you into guessing at an answer. A guess may result in an inconsistency that can later be used against you in court.

If the opposing attorney seems annoyed with you for not being able to give an answer, remember that you are not expected to know the answer to every question or be certain of every fact. Your job is to answer each question truthfully and to the best of your ability; and sometimes the correct answer is, "I don't know."

Understand the Question

Just as you should not guess at an answer to a question, never guess at the meaning of a question if it has not been stated clearly. If you answer a question when the meaning is not clear to you, the opposing attorney will assume you did understand the question. As a result, you may end up contradicting your own testimony.

Always ask the meaning of any words you do not know. Attorneys sometimes use legal language that is unfamiliar to most of us. It is your right to ask an attorney to explain words or phrases you do not fully understand.

Sometimes, even when you know the meaning of all the words used, the way a question is asked is still confusing. Ask to have the question explained or restated. Do not answer any question until you are certain you know what is being asked.

Do Not Advocate Your Case (Trust Your Attorney)

You feel strongly about your case and believe you are in the right, and yet the opposing attorney is asking questions as if you were the suspicious party. The natural response is to become angry and try to defend yourself.

If you do become upset and defensive, you will probably end up making many of the mistakes we have already discussed. As you defend yourself, you may find you are elaborating on a question unnecessarily, answering unclear questions, or hiding harmful facts that will have to be admitted later. You may find yourself using words like "never" or "always," and making other overstatements or generalizations.

Angry, defensive behavior does not make a good impression, and it may also reveal a weakness that the opposing attorney may use to make you look bad in court if your case goes to trial.

So stay calm, listen carefully; and answer the questions, politely no matter how annoying they may seem. Leave it to your attorneys to bring your side of the argument to light.

Do Not Seek Sympathy

Angry and defensive behavior is just one pitfall you may encounter in trying to advocate your own case. In a personal injury case, you may be tempted to try to win sympathy, especially when you are describing the injuries you have suffered. However, complaining, particularly when it has a whining tone, can cost you respect.

You do not want to go to the other extreme and "tough it out," by not admitting to real pain and injury, but it is important not to dwell on or exaggerate your suffering. Answer the questions about your injury fully and completely, but leave it to your attorney to develop those details of your case that will create sympathy for your side.

Be Consistent in Your Facts

Before you have your deposition taken, go over the facts of your case with your attorney. Which facts are you certain about? Which ones are not quite clear? If your recollection of the facts does not seem to fit together, discuss this with your attorney.

On the other hand, do not let your concern about getting your facts straight drive you to memorizing full answers to questions. You may run the risk of sounding rehearsed and thus damage your credibility.

Know your facts, but listen to each question as it comes and answer it in your own words.

Give Your Full Attention Throughout the Deposition

During the course of the proceedings, your attorney may object to something the other attorney has said. While the two attorneys are talking to each other for the moment, not to you, this might seem like a good chance to relax.

However, this is a time to pay very close attention. Your attorney may be concerned about an unclear or improper question that has been asked. If an objection is made, pause until it is "on the record" and do not proceed until instructed to do so by your attorney.

Learn About the Opposing Attorney's Style

Your attorney may want to give you some tips on what to expect from the opposing attorney. Some attorneys try to intimidate, while others may turn on the charm. Ask your attorney to describe the other lawyer's style so you will know what to expect and be more comfortable.

Videotape

It is becoming more and more common for the court reporter to videotape a deposition. Your attorney should be able to tell you whether this will occur and give you any special instructions you may need.

Documents

If you have documents concerning your case, such as checks, receipts, or insurance forms, your attorney will tell you which of these you need to bring to the deposition. Never bring any documents to a deposition without first consulting your attorney because anything you bring may be open to discovery by the opposing attorney.

If you have any other questions about having your deposition taken, you may want to write them down and discuss them with your attorney.