

## ESTIFYING AT A DEPOSITION

A deposition is a pre-trial discovery technique designed for the purpose of obtaining information which may either be used or lead to information which can be used in a trial. It is taken under oath and is an important feature of the fact gathering process. Below are some rules of which I want you to be aware before you go into the deposition. Please pay attention to each point, because each one represents a potential trouble spot.

### A. PREPARATION FOR DEPOSITIONS

1. Be confident and direct with each answer. Do not hesitate

with your answers. If you do not know the answer to a specific question, say so, and prepare for the next question. Do not guess or estimate. You either know the answer or you don't. You are not required to guess.

2. Answer specifically the questions which are asked to you.

Do not offer information in your answer, and do not assume any portion of a question which is not directly requested.

3. Do not answer any question in a manner which would lead to

another question. (i.e. "Were you at the restaurant at 3:00 p.m.?" . . . The Answer to that question is "No", not

"I wasn't there at 3:00 p.m., but I was there at 4:40 p.m.") These types of answers lead the attorney into further questioning which is unnecessary or detrimental.

4. Do not volunteer information or elaborate on your answer.

Answer, only, those questions directly asked of you.

5. Do not volunteer personal opinions or hearsay, and avoid

reference to previous conversations which cannot be substantiated.

6. Do not include the opinions or testimony of others in your

answer. You are answering from your personal knowledge

only!

7. If, in your deposition notice, you are asked to bring

certain documents with you, please review all those documents and familiarize yourself with them and the situation which originated the documents. Be fully aware of your case and your testimony to avoid uncertainty and delays.

8. Do not anticipate the line of questioning which is being asked of you. Wait for each question to be asked and answer only that question. Should you not understand a question, ask that it be repeated or rephrased so as to clarify what information is being asked of you.
9. Do not answer questions which are based on an assumed fact.  
  
(i.e. "Are you still associated with Mr. X?" This question assumes that at some time you were associated with Mr. X and by answering this question, either yes or no, you substantiate that at some point you were involved with Mr. X.) It would be appropriate to ask that the question be restated.
10. Do not ask your attorney if you have to answer a question. If your attorney feels that there is some reason to object to a question, he will so advise all parties; however, this decision is made by your attorney, and unless the question is formally objected to by your attorney and you are instructed by your attorney not to answer, you are required to answer it to the best of your knowledge.
11. If there is a question which you have answered untruthfully, opposing Counsel may allow it, but at trial may use your deposition to impeach your testimony. If you do not know the answer to a question or do not understand it, ask for a restatement, or answer that you do not know the answer, but always be truthful about each answer.
12. Do not allow the attorney who is questioning you to sway your answers or control you. Many times an attorney will ask you the same question several times. Although the phrasing is different, the question is the same. Continue answering each question, without becoming annoyed. The attorney may try to confuse you in hopes of changing your answer. Be specific and direct with each answer.

## B. GUIDELINES

The preparation for depositions has received little attention over the years, and it may sometimes be treated haphazardly in practice. The following are a few guidelines derived from experience, sometimes painful and sometimes rewarding.

1. Understand the attorney's question. If the witness has any doubt about what the attorney is asking, the witness should not hesitate to say so. Politely ask the attorney to rephrase or explain a question. This happens often, and attorneys are generally very willing to restate or clarify their questions. If the witness is not certain about a question or does not remember all of the question, ask the attorney or court reporter to repeat it.
2. Take your time in answering the question. However, answer all questions in a direct and straightforward manner so as not to leave an impression that the witness is uncertain or contriving an answer.
3. Don't play lawyer. Do not try to figure out whether an answer will help you or hinder your case or a given legal position. Answer truthfully. Lawyers can deal with the truth effectively, but we are handicapped when an answer is anything other than the truth.
4. Answer only the question asked. The purpose of the deposition is not to tell the witness' "side" of the case (or her company's side of the story) but to simply answer the questions that are asked. Accordingly, do not volunteer information. Answer the question fully and to the best of your ability without elaboration or unnecessary attempt to justify an answer.
5. Beware of "leading questions". Watch out for leading questions such as "Isn't it true that . . .", "Wouldn't it be fair to say that . . .", "Am I correct in stating that . . .", "Is this how it was . . .", etc. If you do not understand the question, ask that it be rephrased or read back. If you disagree with or cannot accept any implicit or explicit premise of such a question (even a partial one) say so in no uncertain terms and, if asked to elaborate, explain why.

6. Don't let the opposing attorney get you angry or excited.

Under no circumstances should you argue with an opposing attorney. This destroys the effect of your testimony, and the witness may make unfortunate comments which may later surface to regret and disadvantage.

7. Recognize your limitations. The witness should remember that his recollection may have faded over time, and this is an expected normal development. A witness should never state or assume facts which he or she does not actually know or remember.
8. Don't be afraid to talk to your lawyer, and to admit it if asked. Do not hesitate to admit, if asked, that the witness has spoken with his lawyer (or the lawyer for the company, insurance carrier, etc.) before testifying. Do not review any documents in preparation for the deposition without first consulting your lawyer. Important legal privileges and the protection of confidential documents may be lost if they are used to assist or promote a witness' testimony.
9. Tell the truth. The truth in a deposition (or on the witness stand) will never really hurt. A lawyer can deal with the truth in presenting or defending a claim, but there is no explaining why a witness lied, concealed the truth or gave a misleading answer.
10. Give deposition testimony exactly as you would before a judge and jury in a formal courtroom trial. Do not let the often informal surroundings of a pre-trial deposition induce you to give anything other than your best, most honest testimony.