

Deposition Advice for Clients Involved in Business Litigation

A deposition is an oral examination, under oath, before a stenographer who prepares a transcript of the questions and answers. Depositions usually take place at an attorney's office. There is no judge or jury present. In most civil cases, depositions are taken of the parties and principal witnesses.

This outline will help you to prepare for your deposition. While your attorney will meet with you to discuss specific strategy, this outline will provide you with some general information and answers to many of the usual questions about depositions.

What is the purpose of the deposition?

A deposition allows an attorney to explore your knowledge about the events and issues in your case, and to preserve your knowledge in the transcript. If you are unavailable for trial, or if you cannot remember what happened, the attorney can read the transcript in Court. If your testimony changes, the attorney can impeach you by reading your deposition testimony.

Do I have to go to the deposition?

Yes. The Rules of Civil Procedure permit depositions of parties and witnesses. If the time, or date, or location proposed for your deposition is particularly inconvenient, your attorney can try to reschedule the deposition.

Who will be at the deposition?

There will be a stenographer to record your testimony, your attorney, and an attorney for each party in the law suit. Sometimes the parties themselves or other witnesses attend a deposition, but only the attorneys may ask questions.

What do I say?

You must answer truthfully the specific questions that you are asked. Listen carefully to each question and be certain that you understand the question. If necessary, ask to have the question repeated. Then answer the question as simply as possible. Do not exaggerate or volunteer any information.

You must answer out loud. A nod or shake of the head, or a mumbled "un-unh" cannot be recorded as your testimony.

Always be polite and serious in your answer, even if the attorney asking questions is not. Sarcastic or argumentative witnesses simply invite more questions and prolong the deposition.

How should I prepare for the deposition?

Before the deposition, you will meet with your attorney to review the facts and to discuss the likely areas of questioning. While it will be helpful if you have already thought about the case and the facts before that meeting, your attorney will decide how extensively you should prepare

for the deposition. In the appropriate case, preparation may include a thorough review of files and records, studying affidavits and interrogatory answers, and even some role-playing.

What if I cannot recall something?

Say so! The events in your case probably occurred months or even years ago. No witness remembers everything. If you cannot recall, or if you are uncertain about your answer, you should not make guesses or assumptions.

May I talk with my attorney during the deposition?

You may talk to your attorney during any break in the proceedings, however you may not consult prior to responding to a question. Short breaks are common. If you consider it absolutely necessary to consult before responding, a short break can usually be arranged. Always be sure that you clearly understand the question to which you are being asked to respond.

Should I explain my answer?

No. If the examining attorney has missed the point or is confused, that's not your problem. The attorney can ask another question. You should be silent, and wait for the next questions.

May I correct mistakes?

Yes. If you think that you made a mistake, discuss it with your attorney during the next recess. Mistakes can be corrected when the deposition resumes. In addition, after the transcript is available, there is another opportunity to correct mistakes.

What if I am asked to identify a document?

Begin by reading the document carefully, from start to finish. Take your time! If you recognize the document as something prepared or received by you, you can identify it. If you have not seen the document before, or if it is not something prepared or received by you, you cannot identify it. Do not make assumptions about a document, or the origin of a document.

Are there any questions which I should not answer?

You must answer all questions unless your attorney instructs you not to answer, in which event you do not answer. If you think some questions are unfair, or too personal, or for some other reason you do not want to answer them, you should ask for a recess to discuss those questions with your attorney.

What does it mean when my attorney objects to a question?

Your attorney is protecting your rights by making an objection on the record. If your testimony is ever used in the Courtroom, the judge will rule on the objection.

What should I do when my attorney objects?

First, let your attorney state the objection fully. If you give your answer before your attorney has given the objection, a court might rule that the objection was ineffective.

Listen carefully to the objection. If your attorney thought there was something improper about the question, your answer deserves careful consideration. You can ask the stenographer to read back the question so you can study it. After you have heard the question again, you should answer it.

Should I use the deposition to try to convince the other attorney that my position in the case is right?

Generally, no. The time for persuasion is at trial. Your task at the deposition is to answer truthfully the specific questions you are asked. If you try to persuade the other attorney or argue with him, you may reveal too much about your case, and you will certainly prolong the deposition.

What does it mean when something is “off the record?”

“Off the record” means that the question or conversation will not appear in the transcript. Sometimes this is done to avoid making a record of personal or embarrassing items which are not really part of the law suit. However, remember that the other parties and attorneys will hear everything you say, and it is not “off the record” as far as their knowledge is concerned.

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