

# Testimony Tips

## (For Trial or Deposition)

### The Three Purposes of Deposition

1. To discover and document evidentiary information
2. To freeze testimony and prevent changes
3. To test the weakness or effectiveness of the witness

### Appearance and Miscellaneous

Depositions are more casual than court proceedings. Therefore, you do not need to dress up in court attire (suit or dress) but dress neatly and cleanly.

Do not chew gum or smoke while testifying.

Take breaks. From time to time ask for a break. Go to the restroom, drink some water, and stretch your legs. The deposition can last all day and without breaks you are more likely to make mistakes.

### Answering Questions

Answer only the questions asked. No matter how much you want to help the cause, avoid the temptation to expand your answer beyond the question asked. Keep your answers short and to the point. Do not volunteer information that is not sought.

Listen to the question asked. Never interrupt a question with an answer. Do not interrupt a question assuming you know what question is being asked.

Do not assume anything. Testify ONLY as to what you know to be fact.

Do not answer any questions unless you understand the question and the information requested by the question. If you do not understand a question asked, you should request that the questions be repeated or clarified. You have the right to ask for an explanation if anything about a question is unclear. It is important not to give an answer to a question that is not understood. You can also ask that a question be repeated. NEVER guess – you may guess incorrectly.

Do not guess when answering any question. All that you are required to provide is your best recollection. If you do not know or remember the answer to a particular

question, say so. An answer is not required if you are uncertain. Just because you are asked a question does not mean that the question has an answer and that you must have the answer. “I don’t know” and “I don’t remember” can be perfectly acceptable as long as they are not used as escapes or crutches. An answer is not required if you are uncertain.

Do not be sarcastic or make jokes – these do not translate onto a typed transcript and may convey information that you are not intending to convey.

When faced with a leading question, questions that suggest an answer, or hypothetical questions, (that is, a question that assumes facts), be sure that the entire substance of the question is accurate before answering “yes”. If any part of these kinds of questions is inaccurate, then either correct the inaccuracy before answering or simply answer “no”.

Do not hesitate to correct errors you may make during the course of the deposition. Everyone mis-speaks and forgets things.

Respond to each question; but at the same time make the question mean what you want it to mean and answer the question the way you want to answer the question.

**TELL THE TRUTH!** Do not lie, exaggerate, or overstate what you know. Never refuse to answer a question unless you are directed by your attorney to do so! There is no time limit on answering. You do not have to answer quickly. You have time to think about your answers however in a videotaped deposition it is better to avoid extra long pauses.

Do not nod your head yes or no; the court reporter cannot make a record of that gesture. Say on the record what you mean.

Watch what you say “off the record”. Remember to watch what you say during breaks. There is no such thing as being “off the record”. What is said and heard can be repeated back in the deposition room when the deposition resumes.

During the deposition, everything you say becomes part of the transcript. Remember that the court reporter takes down everything you say and makes it part of the transcript. Therefore, think before you speak. Errant comments will be recorded forever for all to see. Avoid using slang and never resort to profanity.

Avoid the use of “never” and “always”. These words are a form of exaggeration. Beware when asked “Do you always . . .?”

If you forget to say something or remember some important facts to a question that was previously asked you can always go back and correct your response.

Remember that at trial, a portion of the deposition may be used to impeach your testimony at trial or offered into evidence.

## **Documents**

Do not bring any documents or exhibits to the deposition with you unless your lawyer so advises. If you rely on them for your deposition testimony, you may be cross-examined about them.

When presented with documents or exhibits during the deposition, take the time to look at/review the materials to be sure that they are genuine and take the time to think about what the document represents. Don't answer any questions about the document until you have read it thoroughly and understand its contents.

You should review all relevant pleadings prior to the deposition.

## **Your Attorney**

Listen for your attorney to warn you of a dangerous question by giving you a cue, such as by asking that the question be clarified or repeated. If your attorney objects to the question stop speaking and listen to the objection being made. Wait to answer until the two attorneys have resolved the objection before beginning or continuing your answer. If your attorney makes an objection to a question you still must answer but this is a signal to think about the question carefully.

Do not look to your attorney. Looking at your attorney affects your credibility as it suggests that you are looking to your attorney to tell you what to say. Meet the opposing attorney eye-to-eye and answer the questions directly.

If you are asked if you have spoken with your attorney in preparation for the deposition, admit it readily. The subject may be privileged but the fact that you conferred is not.

## **The Opposing Attorney**

Listen, concentrate and focus on the question asked.

- Be polite and never become angry or hostile. By becoming angry and hostile you restrict your capacity to listen and concentrate on the question asked.

- Be aware of techniques used by opposing attorneys in an attempt to provoke you into inappropriate behavior, such as adopting an attitude of disbelief, using sarcasm or asking the same question over and over again.
- **Try your best to stay in control of your emotions!**
- Do not argue with the opposing attorney.

Make no deals/agreements with the opposing attorney such as promising to accept a visitation schedule. A willingness to consider and discuss the matter with the other lawyer is all that is necessary.

Do not criticize the opposing attorney for anything, including the attorney's attitude, quality of questions or for repeating the same question a number of times. Be deferential and polite.

Realize that the opposing attorney may attempt to get you to change your answer by suggesting other possibilities. Be aware that too many changed answers can damage your credibility.

If the opposing attorney cuts off your answer be sure to say that you feel that your answer was not complete.

Don't let your guard down. The attorney deposing you will try to come across as your friend. Don't fall for it. They are only there for one reason to strengthen their case with information you provide.

Ignore silence. Another trick is for a lawyer to remain silent after you answer a question in hopes that you'll feel like you have to say something more, and continue testifying. Once you've answered the question, STOP. Don't feel pressured to keep talking