

Deposition Basics: What to Expect and How to Prepare

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As a litigator, I routinely prepare clients for depositions. A deposition is a pre-trial procedure where a party or witness in a legal case provides sworn testimony outside of a courtroom. A lawyer asks questions of the deponent, and a court reporter records the answers. While depositions do not take place before a judge or jury, they are often anxiety inducing for clients.

In my 18 years of legal practice, I've compiled a short list of top tips to help deponents reduce anxiety and feel prepared to do their best during their deposition.

1. **Tell the Truth**

Depositions are essentially conversations that are recorded for future use, whether in a trial, in a motion for summary judgment, or in other aspects of the legal proceeding. They are not the place where you win or lose your case. Rather, they are a time to gather information. Always tell the truth.

2. **Answer Only the Question Asked**

Deponents often get nervous and start volunteering additional information that wasn't requested. For example, if asked, "What is your home address?" the correct answer is simply, "I live at 123 Water Street." However, many deponents will say, "I live at 123 Water Street, but I used to live at 456 Main Street, and before that I lived in a condo on 789 Ute Street, which I sold because it was in a noisy area."

Avoid this common mistake, not only for simple background questions, but more importantly for critical or complex ones that come later in the deposition.

3. **Ask to Review Documents**

You will likely be asked about documents, which may include emails, text messages, or files like Word or Excel documents. Always ask to see a copy of the document that you are being asked about. You are not expected to recall every message or file you have sent or received.

When the lawyer hands you a document, review it. Take as much time

as you need to refresh your recollection. The court reporter does not transcribe, “The witness reviewed the letter for two minutes before responding.” Refreshing your recollection by reviewing the document before answering questions will result in more accurate testimony that reflects the document at issue.

This is true not only for emails or text messages, but also for longer documents. It’s important to know which version of the document you are being asked about, and sometimes in my cases, there are multiple contracts, wills, trusts, or amendments that require enhanced scrutiny.

4. Don’t Guess

Unless you are the designated corporate representative with a list of topics and documents to be responsible for at your deposition, you are not required to know anything in advance as a fact witness. You know what you know! If you have personal knowledge, answer the question. However, if you don’t know the answer, do not guess or speculate. Only answer questions when you have personal knowledge of the facts or circumstances requested.

5. Remember the Never-Ending List

Unless you are absolutely certain, never get to the end of a list. For example, if you are asked who attended an important meeting and you remember Bill, Don, Susie, and Caren, but are unsure whether Jennifer or Tom or others were there, you should say, “Bill, Don, Susie, and Caren attended, and there may have been some others.”

If you later recall other participants, or if other witnesses testify that Jennifer and Tom attended, your testimony will not be invalidated or seem less credible. Instead, it will support both your recollection and the testimony of other witnesses.

Most importantly, always prepare for your deposition with your counsel. If you have a litigation matter and need counsel to assist you, our litigation department would be happy to assist you.