

## PREPARATION FOR DEPOSITION

### **A. PROCEDURE**

The opposing lawyer has a right to take your "discovery deposition." This means that you will be put under oath, just as you would be in court, and the lawyer will ask you questions relating to this case. The questions and your answers will be taken down by a court reporter. Your lawyer will be present. No judge or jury will be present.

After the deposition is over, the court reporter will type the questions and answers if one of the lawyers orders it and all parties can then receive copies. The original may eventually be filed in the court file.

If your case goes to trial and you are present, your deposition can be used in cross-examination by the other lawyer if your testimony at trial differs from your testimony in your deposition. Furthermore, any part of the deposition of a party can be read by the opposing attorney at the trial. **SO BE CAREFUL OF EVERYTHING YOU SAY.**

The other lawyer in this discovery deposition can ask you questions that are admissible in court under the rules of evidence. In addition, the lawyer can ask you questions that you may think are not relevant. The courts allow "discovery" in these depositions and you may be asked for "hearsay" and other things that will enable the other side to make further investigation of the case. Do not be surprised if we do not object to questions that seem to you to be out of line. If the lawyer questions you on any subject that is not proper on a "discovery deposition," we will object to the question. If we object to the question and instruct you not to answer it, then you should **REFUSE TO ANSWER THE QUESTION.** Please do not refuse to answer any question that we have not instructed you to refuse to answer.

When the court reporter types up your testimony, it must be submitted to you for review so that you may make corrections. You will be asked at the end of the deposition whether you waive that right. I will advise you of your right to read and sign the deposition transcript. If you waive your right to read and sign the document, the transcript will remain as typed up by the court reporter without corrections. I always advise the client to read the deposition transcript. If you fail to read and sign the transcript, after noting corrections, within 30 days from the preparation of the transcript the rules provide that you have waived your right to do so.

Rarely will we ask you questions during a deposition that the opposing attorney asks of you. However, we may determine that it may be advantageous to ask some questions, your answers to which should be very short. If we don't ask any questions, don't be disappointed; but if we do, keep your answer short.

### **B. REASONS FOR TAKING YOUR DEPOSITION**

The opposing side is taking your deposition for at least three reasons:

1. They want to find out the facts in your actual knowledge regarding the issues of the case. In other words, they are interested in what your story is now and what it is going to be at trial.

2. They want to see how you handle yourself in a tense testimony situation. How a client handles himself or herself will tell an attorney how hard to press for settlement or trial. Clients who cannot handle testifying may not do well in trial and may therefore have less flexibility when settling the case.

3. They hope to catch you in a lie, so they can show at the trial that you are not a truthful person and therefore, your testimony should not be believed.

4. Your deposition will assist the other side in evaluating the case for settlement purposes. This is often the first and only opportunity the other lawyer has to see you before the case comes to trial. You should answer the questions in an honest and straightforward manner so that the other lawyer will be impressed with the fact that the judge will know, if the case is tried, that you are completely honest and sincere.

5. They will try to get all possible information regarding names and witnesses to assist in investigating and preparing for trial.

6. They will commit you under oath about the facts about your side of the case so that you cannot say anything different at the final hearing without being confronted with your deposition on cross-examination.

### **C. PREPARATION BEFORE ATTENDING THE DEPOSITION**

Before the deposition, review the documents that have been submitted to the court and opposing counsel, especially financial documents, Interrogatory answers and affidavits you have signed.

You should not memorize any statement you have given or memorize answers to expected questions. When answering questions, especially about financial matters, its okay to refer to the documents that have been submitted to the opposing attorney. E.g. when asked about finances you can indicate that you have provided that information and note the most recent document, asking to see the document in order to respond to the questions.

### **D. HOW TO HANDLE YOURSELF IN THE DEPOSITION**

It is important that you not be trapped into something that is not true. For this reason, LISTEN TO EACH QUESTION CAREFULLY AND BE SURE THAT YOU UNDERSTAND IT BEFORE ANSWERING. If you do not understand it, ask the other lawyer to repeat it or to rephrase it so you do understand it. When you understand the question, answer it honestly and in a straightforward manner. If you don't know the answer, say that you either don't know or don't recall.

1. Understand the Question before you answer. You can't possibly give a truthful and accurate answer unless you understand the question. If you don't understand, ask the lawyer to

repeat it or rephrase it. The lawyer will probably ask the court reporter to read it back. Keep a sharp lookout for questions with a double meaning and questions which assume you have testified to a fact when you have not done so. Correct such an assumption when you answer.

2. Take Your Time. Do not hurry. Give the question such thought as it requires to understand it, formulate your answer and then give the answer. Do not give a snap answer without thinking. Allow counsel to complete the question before beginning the answer.

3. Do Not Volunteer Information. Listen very carefully to the question. Answer only the question and then stop. Do not ramble. If counsel wants an explanation, he or she will ask for it. If we want you to explain further, we'll ask you when it comes time for us to ask questions.

4. Speak Slowly and Clearly. Do not nod your head in response to a question. You must answer audibly. The court reporter must record your answer and must hear your answer. If you point or indicate, try to describe what you are pointing to or indicating (Do not be too concerned about this; it is up to counsel to describe for the record how you are pointing or indicating).

5. Beware of Questions Involving Estimates. If you make an estimate make sure that everyone understands that you are estimating. Be sure your estimates are reasonable.

6. Do Not Try to Explain or Justify Your Answer. You are there to give the facts as you know them. Do not apologize or attempt to justify those facts. If you do, you might make it appear that you doubt the accurateness of your own testimony.

7. Give Only the Information Which You Have Readily Available. If you do not know certain information, do not give it. Do not turn to your lawyer or another witness, if one should be present, and ask for the information. Do not promise to get information that you do not have at hand unless your attorney advises it.

8. Do Not, Without Your Counsel's Request, Reach in Your Pocket or Briefcase for a Document. If the opposing side is interested in obtaining documents from you, there are other legal procedures for obtaining them. Do not ask your counsel to produce anything in his or her file.

9. Never Joke in a Deposition. The humor will not be apparent on the cold transcript and may make you look crude or cavalier about the truth.

10. Do Not Volunteer Facts Not Called For by a Question. Such information cannot help your case and may hinder it.

11. After the Deposition is Over, Do Not Chat With the Opponents or their Attorneys. The other attorney is your legal enemy. Do not let a friendly manner cause you to drop your guard and become chatty.

12. Do Not Try to Figure Out Before You Answer Whether a Truthful Answer Will Help or Hinder Your Case. Answer truthfully. Your lawyer can deal with the truth effectively, but is handicapped when you answer any other way.

13. Do Not Fence or Argue with the Lawyer on the Other Side. The lawyer has a right to question you, and if you give smart or evasive answers, the lawyer may use your flippant answer in court against you. Don't answer a question with a question unless the question you are asked is not clear.

14. Do Not Lose Your Temper no matter how hard you are pressed. If you lose your temper, you have played right into the hands of the other side.

15. If Asked Whether You Have Talked to the Lawyer on Your Side, Admit it Freely. That fact that we have conversed before a deposition is good because it lets the attorney know that you have not been neglected. However, don't say what you and your attorney discussed with each other. That is privileged information.

16. Do Not Guess. If you don't know the answer, say so.

17. If Counsel Insists that You Estimate in your answers, be sure that you make it clear that it is an estimate.

18. Do Not Attempt to Outwit Counsel; You Cannot. If counsel is asking improper questions or harassing you, your counsel will protect you.

19. If Your Counsel Makes An Objection, wait for counsel to advise you either to proceed with your answer or not to answer the question.

20. Limit Your Testimony to facts within your knowledge and exclude opinions you may have formed, unless specifically asked for such an opinion.

21. Be Straightforward in Your Answers, attentive and polite to counsel.

22. You Should Be On Time and modestly and conservatively dressed and groomed.

23. Treat all Persons in the deposition room with respect.

24. Arrange to Discuss Your Deposition with Your Attorney in Advance. You should prepare a list of questions you have about the deposition for your attorney to answer when you meet prior to the day of deposition.

25. Feel Free to Request a Cup of Coffee, Tea, Cold Drink. Do not hesitate to request a break to go to the rest room or make an important phone call, etc.

26. Do Not Become Upset over the length or detail of the questions or the opposing attorney's style. If opposing counsel loses his/her cool, please do not do so too.

27. Do Not Chew Gum while testifying or taking the oath.

28. If Your Answer was Wrong, Correct it Immediately, or as soon as you realize you made an error.

29. Do Not Exaggerate or Brag.