

## How to Prepare for your First Deposition

### 1. Answer Honestly

- You will be “sworn in” at the beginning of your deposition. At that time, you will swear to tell the truth. You are promising, under penalty of the law (perjury), to be completely honest. It is important to take that oath seriously.

### 2. Listen Carefully

- Do not interrupt. The court reporter will be taking down all questions and answers during the deposition. He or she will not be able to take down information from two people talking at once and the written transcript of the deposition will be unclear.
- Let the attorney questioning you finish his or her sentence before you speak. Do not try to anticipate their question.
- Ask for clarification or for the attorney to repeat or rephrase the question, if you do not understand it.
- Take a moment to think about your answer before you give it. The deposition transcript will not demonstrate pauses or gaps in testimony. So, take your time.
- If you are being represented by counsel, listening and taking a pause before answering the question gives your counsel the opportunity to make objections, if he or she wishes to do so.
- Just as you should not interrupt the attorney, the attorney should not interrupt you.
- Do not assume that the attorney asking the questions knows more than you do. If he or she assumes incorrect facts in the question correct those errors before answering. (Example: Question: “When you were wearing a tutu on the evening of January 1, 2012, did you speak with Ms. Smith?” Answer: “I spoke with Ms. Smith on January 1, 2012, but I was not wearing a tutu.”)

### 3. Guesses vs Estimates

- *Do not guess.* If you don’t have a reasonable basis for your answer tell the attorney that you would be guessing.
- “I don’t know” or “I cannot recall”, if they are true, are fine answers.
- You need to have personal knowledge about what you are testifying to. If you are asked about events that you did not witness or conversations you were not part of you are probably being asked to guess and you should *not* do so.
- The attorney is, however, entitled to your “best estimate.” Estimating comes up frequently with questions about dates, times, speeds, sizes, distances, and ages.
- If you have sufficient knowledge or memory to estimate an answer you should do so. Explain that you are estimating in your answer (i.e. “I cannot recall the exact size of the table, but I would estimate that it was approximately 5 feet long and 2 feet wide”).

#### 4. Silence is OK

- Keep in mind that your deposition is not a social hour or a meeting of friends. Even though it is not going to take place in a courtroom it is a formal question-and-answer session that could have a serious impact on the case.
- You don't need to engage in chit-chat before or after the deposition with the attorneys and/or court reporter. You are not there to make friends. You can choose to just sit quietly and that is probably the best option.
- Answer each question completely and then stop. Even if the attorney stares at you or acts like he or she wants you to say more, if you are finished with your answer be finished. You do not need to talk to fill the silence.
- Do not volunteer information that is not asked for.

#### 5. Asking for a Break

- Any time you need to use the bathroom, get a snack, make a phone call, etc., you may ask for a break.
- You should not be denied the opportunity to take a break. Sometimes if a question has been asked and you ask for a break before answering it the attorney will ask you to answer the question pending before taking the break.
- Saying that you want to go "off the record" is the formal way to say you want the court reporter to stop typing so that you can either take a break or have a discussion with someone in the room that is not written down as part of the transcript.
- When break time is over someone will tell the court reporter to go "back on the record." Then, the court reporter will start typing down everything that is said, once again.

#### 6. Correcting Prior Testimony

- A week or two after the deposition is over you will be provided with a copy of the typed-out Deposition Transcript, by the court reporter. You will have the opportunity to review the transcript and see if there are any errors. If there are, you can write the errors down on an "errata" sheet that will be provided with the transcript. Write down the page and line numbers of the errors and what the correct testimony was/should be.
- Keep in mind that if you make changes to the meaning of the testimony, beyond just correcting typos, i.e. you change your testimony that the light was "red" to the light was "green", it might impact your credibility at time of trial.
- You will also sign a "verification" page which is included.
- Return the transcript, verification, and errata sheet promptly.
- An envelope with postage and the address that the transcript must be sent to should be provided for your convenience.

#### 7. Most Important Tip: Retain Counsel and Insist on a Deposition Preparation Meeting

- This resource article was created for people who cannot afford to retain counsel and also as general information for those about to undergo their first deposition. We highly recommend that prior to your deposition being taken you retain counsel, if at all possible.

- Some attorneys will accept a Limited Scope Retainer just for purposes of preparing a party or witness for his or her deposition and for defending the deposition.
- We usually spend a full day or even more depending on the complexity of the case with each of our clients to prepare them for their depositions. We want to make sure they feel comfortable with the process and confident that they understand exactly what to expect.