

WHAT IS A DEPOSITION?

A deposition is an information-gathering tool used by lawyers during the “discovery” phase of a case. At a deposition, the *deponent* (person being deposed) is placed under oath and asked to give truthful responses to questions asked by the attorney conducting the deposition. The questions and answers will be recorded, and later transcribed, by a court reporter.

WHO IS PRESENT?

In addition to the deponent and the court reporter, the attorneys representing each party to a claim, as well as the parties themselves may be present at a deposition. A deponent who is not a party has a right to have his/her attorney present.

HOW LONG WILL IT TAKE?

A deposition notice typically states that the deposition will begin at a specified time and continue until completed. The length of a deposition depends on a variety of factors including the amount of information possessed by the deponent, the complexity of issues involved and the questioning abilities of the deposing attorney. Your attorney is in the best position to give you time estimate for your deposition.

WHERE IS IT HELD?

Depositions are generally held in the office of one of the attorneys involved in the action, but may be scheduled at other locations, such as at the courthouse or in the office of the deponent.

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PREPARING FOR YOUR DEPOSITION



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Why am I being deposed?

There are a number of reasons why an attorney might want to take your deposition, as follows:

- 1) To obtain information about the case;
- 2) To find out what you know *and don't* know;
- 3) To assess your demeanor to determine what type of witness you will be;
- 4) To preserve testimony for trial if you are unable to testify at trial;
- 5) To confront a party deponent with damaging information about the case;
- 6) To catch you in a lie.

How will my deposition be used?

The primary use of a deposition is to obtain and preserve the information a witness knows. Attorneys may rely upon deposition testimony as they attempt to negotiate a resolution to a case.

At trial, a discovery deposition may be used to help refresh the recollection of a witness or to impeach a witness (show that a witness has testified inconsistently on a previous occasion). In certain circumstances, such as when a deponent is unavailable for trial, a deposition transcript may be read into evidence as testimony.

Some depositions are taken only for the purpose of being introduced as evidence at trial. These depositions, called evidentiary depositions, are generally videotaped and are usually reserved for expert witnesses, such as doctors, accident reconstructionists and other similar expert witnesses.

What questions will I be asked?

Questions by the deposing attorney: In general, you may be asked questions about any matter which is relevant to the subject matter of the case in which you are testifying. "Relevant" means that the information tends to make an important fact either more or less likely than it would be without the information. This is a liberal definition and means that you may be asked questions that are marginally related to the case. In general, however, most attorneys will question you about what you know about the case and how you know it.

Handling objections: Some questions should not be asked at a deposition. These questions may be objectionable because they seek irrelevant or privileged information. If your attorney objects to a question, you must still answer the question. However, if your attorney objects, *and instructs you not to answer*, then you should refuse to answer the question.

Questions by your attorney: Your attorney has the right, at the end of the deposition, to ask you questions. Generally, these questions are intended to clarify areas that may have been unclear during the questioning by the deposing attorney. Do not be concerned if your attorney does not ask you any questions.

What if I make a mistake or forget to say something?

At the conclusion of your deposition, you will have a right to indicate if you want to read and sign your deposition transcript. If you elect to read and sign your deposition, the deposition transcript will be submitted to you for review so that you may make corrections. The corrections must be made within 30 days of receipt of the transcript. If you waive your right to read and sign the transcript, it will remain as transcribed by the court reporter without corrections.

How do I prepare?

Before the deposition, you should review any documents that have been submitted to the court and opposing attorney, as well as any other pertinent information brought to your attention by your attorney. Your attorney will likely want to meet with you prior to your deposition to help you prepare for it.

How do I handle myself at the deposition?

- 1) Listen to each question carefully and be sure that you understand it before answering. If you don't understand the question, ask the deposing attorney to repeat or rephrase it.
- 2) Wait until the deposing attorney has finished his/her question before you begin your answer.
- 3) Take your time to think about your answer;
- 4) Speak slowly and clearly and answer audibly;
- 5) Answer *only* the question being asked--do not ramble or volunteer information;
- 6) Do not guess. If you don't know an answer or have to estimate, make sure you make that clear;
- 7) Do not lose your temper, become argumentative, or try to outwit the opposing attorney;
- 8) If there is an objection, wait for your counsel to advise you whether to answer or not;
- 9) Feel free to request a break if you feel you need one;
- 10) Do not turn to your attorney or other persons in the room for assistance in answering a question and; most important of all,
- 11) **TELL THE TRUTH!**