

HOW TO GIVE A DEPOSITION

In the “old days” lawsuits were sometimes jokingly referred to as “trial by ambush.” A surprise witness might appear, a document would show up at trial that the other side knew nothing about or a party could change “his story” during the course of the litigation. That rarely happens today because of the use of depositions and other “discovery” procedures that are now available to both sides in a lawsuit.

The discovery rules today are designed to let both sides know what facts, documents and what the witnesses will say before the trial ever begins. Under the rules governing trials attorneys on both sides of a case are allowed to “Discover” facts, positions, documents, experts and information that the other side possesses before having to proceed to a trial before a judge or a jury.

Giving a deposition is one facet of the “discovery process.” A deposition is sworn testimony recorded by a qualified court reporter who records the questions asked and answers that the one testifying gives. There are several reasons why attorneys take depositions:

1. Attorneys want to find out the details of a party’s “story” of what happened and as a result of what happened, what is the parties’ current status.
2. Attorneys will be judging what kind of witness he or she thinks you will make at the trial. Will you be believable? Do you tell compelling facts? Do you have any irritating mannerism? Are you easily tripped up while testifying? Are you prone to become angry?
3. Attorneys want you committed to the story that you will give at the trial. If you change your responses to the questions you are asked when you get to trial, the typed deposition will be used to discredit you. I can explain how that works if you will ask me.
4. The attorneys also use depositions to evaluate whether the matter should be settled rather than risk a trial.

I will explain to you at greater length the process of giving a deposition, but suffice it to say that there will be only the parties at the deposition, the attorneys and a court reporter. No one who is not a party can be present in the room at the deposition. It is a little less formal than a court hearing, but something which you need to take very seriously.

Now, let’s look at the specific suggestions I have for you when you give a deposition:

- **TELL THE TRUTH.**
Above all, never take a chance at “shading the truth.” For one thing, your deposition will be given under oath which means that if you lie, and are caught in that lie, you can be tried for perjury (lying under oath), which is a criminal offense. It will also likely result in you losing your legal action or at least being discredited.

- **MAKE CERTAIN YOU UNDERSTAND THE QUESTION BEFORE YOU TRY TO ANSWER.**

Listen carefully and be certain that it is clear what you are being asked. If it is not clear, ask the attorney to rephrase the question before you attempt to answer it. Never attempt to answer a question you don't understand.

- **TAKE YOUR TIME BEFORE RESPONDING.**

No matter how impatient the attorney questioning you may appear, you should be slow and deliberate in your responses. This allows you to be certain you grasp the question and know where you are going with your answer. It also allows me to make an objection to the nature or form of the question before you begin answering. Having said that, don't be ridiculous in pausing for so long that it appears you are making up your answers as you go along.

- **ANSWER ONLY THE QUESTION ASKED YOU.**

Do not volunteer information. All you are required to do is answer what is asked you.

- **YOU ARE NOT THERE TO PROVE YOUR CASE.**

There is no judge or jury at the deposition to rule on your case so don't try to convince anyone of the merits of your case. If the attorney fails to ask you a question that you think is important to your proving your case, that his/her fault. It isn't our obligation to help prove your case. Answer only what you are asked. Don't volunteer information.

- **THERE IS NOTHING WRONG WITH SAYING, "I DON'T KNOW."**

Don't guess at the answer to a question you are asked. Don't speculate. Don't get drawn in to estimating. If you don't know or can't recall, then say that you don't know.

- **A "YES" OR "NO" ANSWER MAY BE SUFFICIENT.**

Don't be that person who when asked what time it is describes how to make a watch. If any question you are asked can be adequately answered "yes" or "no" then that is all you need to answer.

- **A "YES" OR "NO" ANSWER MAY NOT BE SUFFICIENT.**

Under the rules you may be required to respond with a "yes" or "no." However, under the same rules you may explain your answer if "yes" or "no" is not adequate. An example is the question: "Do you still beat your wife?" A yes or no is obviously not sufficient so you can say (if truthful) "No and I never have."

- **ALWAYS GIVE AN AUDIBLE ANSWER.**

Most court reporters use recording devices that can't record a nod of your head so give your answer verbally. Also, it is best to not use slang words such as Yep, Yeh, Ugh huh, etc.

- **WATCH OUT FOR COMPOUND QUESTIONS.**
Attorneys will occasionally combine two questions into one. Care must be taken to either request that the lawyer to ask the two questions separately or you identify which question you are answering first and then second.
- **REMAIN COOL, CALM AND COLLECTED.**
Don't allow the attorney to bait you into getting angry. Most of us don't function well when we loose our tempers. Certainly don't argue with the attorney and don't ask the attorney questions, such as, "Wouldn't you have done the same thing?" At depositions the attorneys get to ask the questions and you get to answer them, not the other way around.
- **TAKE SPECIAL CARE WITH QUESTIONS OF TIME, DISTANCE, DATES, PLACES, WEIGHTS, ETC.**
If you are certain about the date, time, distance, weight and the like then go ahead and state what you know. If you aren't certain, then say so, and if pressed for an estimate, make sure your answer indicates that it is an estimate.
- **AVOID THE USE OF SUPERLATIVES SUCH AS NEVER, ALWAYS, BIGGEST, LOUDEST, NICEST, WORST, ETC.**
It is far more important to speak in measurable terms rather than use words that are open to differences of opinion.
- **CORRECT ANY MISTAKES IN YOUR TESTIMONY AS SOON AS YOU REALIZE THEM.**
If the mistake is realized during the deposition, tell the attorney quizzing you that you just realized that you previously made an error, misspoke or gave an erroneous response. While you are on the record, fully explain both what you had said previously incorrectly and your corrected response. If you realize your error after the deposition is over call me immediately so I can advise opposing counsel and correct the misstatement.
- **WATCH OUT FOR THE "WOULD YOU AGREE?" QUESTION.**
Never agree unless it is a fair and accurate statement in every detail. Often that question is used to add an element of emotion that may be inappropriate or exaggerated.
- **DON'T APPOLOGIZE OR ATTEMPT TO JUSTIFY YOUR ANSWER.**
You are at the deposition to give the facts as you know them.
- **WHEN QUOTING OTHERS.**
If you are asked to relate conversations, make sure you make it clear whether you are quoting verbatim or are paraphrasing.

- **IF ASKED IF YOU CONSULTED WITH YOUR ATTORNEY BEFORE THE DEPOSITION.**

Don't be concerned about admitting that you and I consulted about the deposition. If you're asked what we talked about you simply tell the attorney that I told you to always tell the truth and be honest. The lawyer doesn't have the right to know anything else about what we discussed.

- **DON'T BE CUTE, FUNNY OR TOO CHUMMY WITH THE OPPONENTS**

Either before, during or after the depositions, be polite, but don't get too friendly with the other parties or their attorneys. You might let your guard down and reveal something you shouldn't.

- **LISTEN FOR MY OBJECTIONS TO ANY QUESTION ASKED OF YOU.**

Listen and if you hear me object to any question you are asked, stop your answer immediately and wait until I direct you to answer the question. Since there is no Judge present to rule on objections, all objections and the subsequent answers at the depositions are preserved for a ruling at the trial by the presiding judge.

- **RELAX, KNOWLEDGE IS POWER.**

You know your case better than anyone because you have lived through it. I know it next best. The lawyer on the other side will never know your facts as well as you do, so relax and remember, you have the power of knowledge.

- **DON'T BRING NOTES TO AID YOUR MEMORY.**

The use of notes makes it appear that you don't know your facts very well. Also, if you use notes to refresh your memory, the other attorney can require you to allow him or her to review your notes, and ask you about your specific entries.

- **LET ME KNOW IF YOU REALIZE LATER THAT YOU MADE A MISTAKE.**

If you discover after the depositions are over a mistake in your testimony let me know immediately so we can advise the other attorney. This is better than waiting to trial and having to admit a mistake.