

DEPOSITION INSTRUCTIONS PROCESS, PITFALLS AND OVERVIEW

First, do not panic or be concerned that your deposition has been scheduled. In any family law case the depositions of the parties are frequently taken. Your case is no exception to this general rule. Therefore, to help put you at ease and at the same time inform you, I want you to read the following carefully so that you will have a clear understanding of what to expect. You will, of course, have an opportunity to discuss any of these matters with your attorney and ask specific questions you may have during the pre-deposition prep conference. For the time being accept that this is merely a guide that applies generally to all cases. The purpose of these instructions is to inform you what a deposition is, why it is being taken, how it will be taken, and the pitfalls to avoid during its taking.

1. What is a Deposition? A deposition is your testimony under oath. You will be asked questions by the opposing attorney and, in most cases, the proceedings and all questions and answers will be recorded by an official court reporter. The judge will not be present and, in all likelihood, the deposition will be taken in one of the attorneys' office. There is little difference between the testimony at a deposition and the testimony in the courtroom, with the exception of the judge presiding and ruling over the matters as they arise. The judge may do so later.

During the deposition whatever you say will be transcribed by the court reporter and filed in your case. We will receive a copy of the questions and answers and these will be available for your to read at a later date. The opposing attorney will also receive a copy of these questions and answers at the time of the trial. If anything is different, he will be able to confront you with your prior testimony.

The procedure is very informal, and although it is important, there is nothing about which you should be nervous. There is no way of telling how long the deposition will last since this depends on how complicated your case might be. Generally, however, it will last for at least one hour.

The opposing attorney is interested in finding out many things about you and the facts of your case. You should make a complete, honest and frank disclosure of anything you are asked, but do not volunteer any information you are not asked. Every question should be answered without any unnecessary explanations and as briefly as possible. Simple "Yes, Sir" and "No, ma'am" answers are preferred. When the opposing attorney has finished asking his questions your attorney has the opportunity to add anything we feel might need explaining. Leave it to our judgement as to what needs enlarging or explaining rather than trying to convince the opposing attorney that you know everything about your case. If the deposition goes along the usual course, your attorney will not ask you any questions at the end of the deposition. You should adopt the attitude during your testimony that you are telling the absolute truth and not feel that an explanation is needed in order for anyone to believe your testimony. Merely state a truthful answer and do not try to convince anyone as to why it may be a logical answer.

2. Personal Appearance and Conduct:

One of the things that the opposing attorney will discover during the deposition concerns your personality and appearance. Your dress and appearance should be neat, clean and conservative in style and most importantly comfortable. We want you to be extremely polite during the deposition and treat the other attorney with respect and courtesy, regardless of the opposing attorney's attitude or treatment. However, do not hesitate to disagree and remain firm in your version of things, even if the attorney on the other side is suggesting a different version to you or because he may repeat a question.

3. The Purposes of a Deposition. The opposing side is taking your deposition for three main reasons:

(a) They want to find out what facts you have in your actual knowledge and possession regarding the issues in the case. In other words, they are interested in what your story is now and what it will be at the time of the final hearing.

(b) They want to pin you down to a specific story so you will have to tell the same story at the final hearing. Through a deposition, they will know in advance what your story is going to be.

(c) They hope to catch you in a lie so that they can show at the final hearing you are not a truthful person and therefore, your testimony should not be believed on any of the points, particularly the crucial ones.

These are very legitimate purposes and the opposing side has every right to take your deposition. Correspondingly, you have the same right to take depositions of the opposing party and all witnesses.

3. Types of Questions:

Make absolutely sure that a question is completely finished before you give your answer. Take all of the time that is necessary to completely understand the questions before you give your answer. Don't ever be embarrassed to say that you do not understand a question and/or a particular word in a question. Also be careful that you do not say "yes" or "no" to a double-barreled question which may contain two different questions. Do not try to guess whether or not an answer will help or hurt your lawsuit. Tell the truth as best you can and leave it to others to judge the result.

4. Prior Personal Life:

You may be asked if you have ever been convicted of a crime and about your personal life in general. None of us have lived a perfect life and if you have any skeletons in your closet, please make sure you discuss it with us before the deposition. All criminal records and other sources are automatically investigated to double-check your testimony. Any other matters concerning prior divorces or personal problems should be discussed with your attorney because you will be required

to give answers in this regard. Anything that you say to your attorney is absolutely confidential and privileged and we cannot and will not repeat it. We must know the full picture, however, so that we can adequately represent you.

5. Be Brief:

You will be asked in great detail about different facets of your marriage. A general question might be asked of you, and in response to this, you should give an answer that is truthful but brief. Remember that you are under oath and every word you say will become part of the permanent file which can be used either for you or against you. Therefore, if you can tell your story in fewer words, there will be less trouble. Never forget that if you truly do not know the answer to a question, the only truthful answers are either, "I don't know" or "I don't recall".

6. Pitfalls to Avoid.

(a) Always remember that, as a witness, you do not have any purpose to serve other than to give the facts as you know them. You must give the facts if you have them. You do not, however, have to give opinions and you should never give opinions. Generally speaking, if you are asked a question which calls for an opinion, I will object to the question. However, after my objection, if I advise you to go ahead and answer and you do have an opinion on the subject, then you may give it.

(b) Never state facts that you do not know. Quite frequently you will be asked a question by the attorney and even though you feel you should know the answer, you do not and you will be tempted to guess or estimate what the answer should be. **THIS IS A MISTAKE.** If you do not know an answer to a question, even though you would appear ignorant or evasive by stating that you do not know, you should nevertheless do so. A guess or an estimate for an answer is usually the wrong answer and one from which the opponent can show that you either do not know what you are talking about or imply that you are deliberately not stating the truth. Generally speaking, the attorney is in a position to know what the answer should have been and it may very well be that the reason he asked the question was because he knew you would not know the answer, but felt that you would be compelled to guess.

(c) Never attempt to explain or justify your answer. You are there to give the facts as you know them and not to apologize or attempt to justify those facts. Any attempt at such would make it appear as if you doubt the accuracy or authenticity of your own testimony.

(d) You are only to give the information which you have readily available. If you do not know certain information, do not give it. Do not turn to me and ask me for the information or turn to another witness, if one should be present. Do not promise to get information that you do not have readily at hand, unless I advise it. If you know an answer to a question at the time that it is being asked, then you should answer it. Do not agree to look up anything in the future and supplement the answer you are giving, unless you are advised to do so.

(e) Do not, without your attorney's advice, reach in your pocket for any kind of document or information. A deposition is taken for the purpose of eliciting facts which you know and have in your mind and not for the production of documents. If the opposing side is interested in obtaining documents from you, there are other legal procedures to obtain them. Do not ask me to produce anything which is in my file.

(f) Do not let the opposing attorney get you angry or excited. This destroys the effect of your testimony and you may say things which can be used to your disadvantage later. It is sometimes the intent of attorneys to get a deponent excited during the testimony hoping that he or she will say things which may be used against the deponent later. Under no circumstances should you argue with the opposing attorney. Give him only the information you have, which is all he is entitled to. Respond to his questions in the same tone of voice and manner that you would in answering your own attorney's questions. The mere fact that you get emotional about certain matters could be to your opponent's advantage in the case.

(g) If your attorney begins to speak, STOP WHATEVER ANSWER YOU MAY BE GIVING and allow him to make his statement. If I am making an objection to the question being asked, do not answer until your attorney, after making my objection, advise you to go ahead and complete your answer. Once your attorney tells you not to answer a question, you should refuse to do so.

(h) You should take your time in answering questions when necessary. Remember, the transcript of your deposition does not show the length of time used in considering your answer, although it is advisable to answer all questions in a direct and forward manner.

(i) Tell the truth. The truth during a deposition or on the witness stand will never really hurt a litigant. An attorney may explain away the truth, but he cannot explain the client's lies or concealment of the truth.

(j) Never joke in a deposition. The humor will not be apparent on the cold transcript and will make you look crude or cavalier about the truth.

(k) Do not volunteer any facts that are not specifically requested by a question. Such information cannot help but rather hinder your case.

(l) After the deposition is over, do not chat with the opponent or the attorney. Remember, they are your legal enemies. Do not let friendly manners cause you to drop your guard and become chatty.

(m) Do not try to figure out beforehand whether or not a truthful answer will help or hinder your case. Answer truthfully. I can deal with the truth effectively, but am handicapped when you answer any other way.

(n) Be sure to bring with you the documents specified in the notice of deposition, if any.

7. In summary:

The following are the general rules which you should observe:

1. Tell the truth.
2. Do not lose your temper.
3. Do not be afraid of the lawyers.
4. Speak slowly and clearly. It is important to think before you speak and do not rush your answer. You control the flow and pace of the questioning to your own comfort. You have the information they are asking for which puts you "in the driver seat".
5. If you do not understand the question, for whatever reason, ask that the question be repeated or rephrased. If you still do not understand what is being asked advise the attorney simply "I do not understand your question". However, and importantly, do not provide any answer until you are confident that you know what you are being asked.
6. Answer the question directly, giving concise answers to question, and STOP TALKING. Do not try to guess the next question, be patient, and do not be afraid of silence.
7. NEVER VOLUNTEER any information. Wait until the questions are asked, answer it and stop. If you can answer, "Yes, sir" or "No sir", do so, and STOP.
8. Stick to the facts and testify to only that which you personally know.
9. Do not exaggerate.
10. Testify only to "basic facts" and do not attempt to give opinions or estimates unless you have good reason for knowing such matters.
11. If you do not know, admit it. Some witnesses think they should have an answer for every question asked. You cannot know all of the facts and you do yourself a disservice if you attempt to testify to facts with which you are no acquainted. It is IMPERATIVE that you be HONEST and STRAIGHT-FORWARD in your testimony.
12. Do not try to memorize your testimony. Justice requires only that a witness tell his/her story to the best of his/her ability.
13. You must tell the truth on these depositions. You cannot change your testimony later.

14. It is not our purpose to give the opposing party any more information than we have to. This is no time to convince the other side of the value of your case. We will do that at another time. Therefore, only answer the questions asked and answer them with as few words as possible.

15. Do not answer the question unless you have heard it and clearly understand it.

16. Do not guess or speculate, If there is something you do not know, admit that you do not know. it.

17. If you need a break to talk to your attorney, or for any other reason, tell your attorney and a break will be taken.

18. Many of the questions you will be asked will not be admissible at the trial but the opposition is entitled to an answer in order to help them prepare their case. Many cases are lost because the spouse/witness tried to hide something. Tell the whole truth on these depositions. Many of the questions cannot be used in the trial unless you have not told the truth, and then your false answers can be shown at the trial and could hurt your case.

19. If your attorney objects to a question, stop talking and your attorney will instruct you after the attorney has stated the objection to either answer the question or not answer it.

20. After the depositions are over, do not discuss anything in the presence of the opposing lawyers or the reporter. Anything you say may then reopen the deposition. If you want to discuss something after the deposition, wait until you and your lawyer are alone.

REMEMBER, perhaps the most important aspect of your lawsuit is YOU and the appearance and impression you make. If you give the appearance of earnestness, fairness and honesty, and if in giving your discovery deposition you keep in mind the suggestions made herein, you will be taking a great stride toward successful and satisfactory completion of the litigation in which you are involved. What you do at the deposition can help you or hurt you depending on your attitude, truthfulness and appearance.

I hope this information will orient you briefly to the legal procedures of the deposition and thereby put you at ease as much as possible.