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What Every Business Person Needs To Know About Being Deposed

A primer on what to expect, how to prepare and the best ways to respond during your first deposition

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Being deposed can feel like entering uncharted territory. Unlike court testimony—which at least gets dramatic representation in movies and on television—depositions are something in which few people have actually participated. Knowing what to expect, how to prepare and the best ways to give direct, truthful answers will make any deponent feel more comfortable and more capable of participating fully and meaningfully.

What to expect

Where do you sit? How long will it take? What should you wear? Here's a practical explanation of your deposition day.

- You will be in a conference room. Your lawyer will be next to you and the court reporter will be on the other side of you. The questioning attorney will be on the other side of the court reporter. If there are multiple parties to the case, there may be several attorneys present. If the deposition is being videotaped, there will be a videographer filming you.
- Expect your deposition to go all day. Under the Federal Rules, the questioning attorney is entitled to seven hours of on-the-record testimony. And don't expect to have the opportunity to return phone calls and emails. Breaks will be kept relatively short and you will usually want to use them to talk to your attorney.
- Dress in a professional manner, depending on your profession. If your title calls for a suit, wear a suit. If, however, your job requires more casual attire, talk to your lawyer about what you should wear. Obviously, if you are being videotaped, your attire is a bit more important.

What to keep in mind

While every case differs, the following suggestions will help you feel more comfortable and confident during your deposition.

1. Tell the truth. It sounds obvious, but you will be under oath, and false testimony constitutes perjury. You will even be asked to raise your right hand and take an oath to tell the whole truth. If there is negative information that you are concerned you will have to disclose, be sure to tell your attorney about them ahead of time. But bad facts exist in every case. It's best to answer questions that call for bad facts directly and quickly. If you try to evade the answer, it will only make those facts look worse.

2. Wait until the question is finished before answering. Often you will know where the question is going and you will want to jump in to answer before the questioner is finished. Don't. The court reporter can only take down one person's responses at a time. Your lawyer will likely want to quote from your deposition in later briefs, which will be hard to do if your statements are intermingled with what the questioning attorney is asking.

3. Answer the question even if your attorney objects. Unlike testimony taken in court, deposition testimony is being preserved for later purposes. Therefore, your attorney will make objections, but the court will not rule on them until much later—if ever. Therefore, go ahead and answer the question unless your attorney says the words, "And I direct the witness not to answer." It is very unlikely that your attorney will say these words. The most likely reason would be if the question called for privileged information. If your attorney does happen to say those words, follow her direction.

4. If you have a question about privilege, ask to speak to your attorney immediately. Hopefully, your attorney will recognize when a question might call for privileged information. But if you are uncertain whether you can answer a question because doing so requires you to disclose information that you believe might be protected by the attorney-client privilege, ask to speak with your attorney before you respond.

5. Don't fight with the questioning attorney. It is likely that you will find the questioning attorney really annoying. This could be because he is suing your company or engaging in an intentional strategic ploy. Either way, do not take the bait. Be professional and courteous at all times, although it may be appropriate to show a certain amount of restrained indignation if the line of questioning calls for it. For instance, if the questioning attorney incorrectly suggests that your company was acting unethically or committing fraud, you may want your response to convey the offense you've taken to that suggestion. Such a reaction, however, should be one that is sincere and natural—not one that is contrived. And don't let your emotions get the better of you. Better to err on the side of restraint.

6. We are not here to win today. You might think that since you are being asked questions all day long you will get the chance to tell your side of the story. Don't be surprised if you don't get that chance. Remember, this is your opponent's chance to get information that it hopes will be helpful to its side. Your chance to tell your story will come later, at trial.

7. Listen to the question asked, answer that question—and that question only—accurately, completely and in as few words as possible. If you were asked the question, "Do you know what time it is?" you might be

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tempted to answer, "3 o'clock." But the correct answer to that question, assuming you know it is 3:00, is "yes." Don't assume you know what the question is trying to get at and jump to the chase. Answer the question before you, and then stop talking.

8. Be comfortable with long silences. Once you are finished answering a question, there might be a long pause while the questioning attorney decides the next question to ask. For those who are used to being in depositions, this is a normal occurrence. To the deponent, it can seem agonizingly awkward—so awkward that you might feel compelled to fill the silence by elaborating on your previous answer. Fight that urge.

9. Ask for a break if you need one. Most lawyers try to take a break every hour or so. Others will continue until the court reporter cries out in agony or the videotape needs to be changed. If you need a break, ask for one.

As long as you answer the question that is pending, you'll get a break.

10. You will have an opportunity to make corrections. Following your deposition, you will receive the transcript of your testimony. You should review it carefully for errors where you believe the court reporter misheard you or otherwise transcribed the wrong response, such as a typographical error. This is an opportunity to make sure the transcript accurately reflects what was said during the deposition, not an opportunity to substantively change your answers in hindsight.

Conclusion

Depositions play a critical role in business litigation. Understanding not only the facts of the story at issue, but also the demeanor, believability and likeability of the people involved in the dispute helps lawyers on both sides assess both the viability and value

of the case. As a result, your preparation and participation can make a meaningful difference to the outcome.

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