

ARE YOU PREPARED FOR YOUR DEPOSITION?

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"We are what we repeatedly do. Excellence, then, is not an act, but a habit."
-Aristotle-

You have just been served with a lawsuit. The house you sold two years ago has expansive soil and is now sliding down the hill. The buyers are going to have to pay \$250,000.00 to fix the problem. They want you to reimburse them since you never told them about the problem. The buyers' attorney has noticed your deposition. Will you be ready for it? How do you prepare for it? Will your attorney help you?

Going through a deposition is not a pleasant experience. Preparing for it can make the experience less harrowing.

A deposition is a question-and-answer session that takes place in an attorney's office. Usually present are the attorneys for the parties, the parties themselves, and a court reporter. The answers you give at a deposition are testimony. The court reporter swears you in and you answer the questions under oath. It is no different from you testifying in court.

There are tried-and-true rules for preparing a witness to testify at a deposition. The following points will help you become a better witness, and could possibly make the difference whether you win or lose your case.

1. **IF YOU DO NOT REMEMBER, SAY SO.** Never think that you must have 100% total recall or something even close. Time may heal a broken heart, but it sure does not help your memory. Do what you can before the deposition to refresh your recollection about the incident. Perhaps, you still have paperwork about your particular incident. Review it. Perhaps your diary from that year is still around—locate it and read it. Then, if a question comes up at the deposition that you do not recall the answer to, tell the attorney, "I'm sorry, but I don't remember that . . ."
2. **DO NOT NARRATE.** Moreover, I really mean that—listen to the question; if you can answer it with a yes or a no, do just that. When you add more to your answer, you simply give the attorney more ammunition to use against you. Don't think you have to prove your case or defend yourself at a deposition—you do not. You prove your case at trial—and only at trial. Remember, attorneys contrary to popular belief are human too; they get tired. When you answer a question with a yes or no response, the attorney works harder. Keep that in mind! If your attorney does not object to a question that calls for you to narrate, he better have a good reason for allowing you to answer that type of question; if not, you need another attorney.
3. **MAKE SURE YOU UNDERSTAND THE QUESTION.** If you do not understand the question, or think you could answer it in another way, ask the

attorney to either repeat or rephrase the question. Make sure the attorney keeps the question short and to the point. The longer the question is, the greater the possibility that you will answer it wrongly. Make sure the attorney is asking only one question at a time. If you hear two questions, and your attorney does not say anything, ask the deposing attorney which question he would like you to answer first.

4. **DO NOT SPECULATE OR GUESS ABOUT THE ANSWER.** Answer the question only if you have firsthand knowledge of the incident in question. Let us assume the attorney—using our sliding house example—asks you about conditions found in the expansive soil after the soil was tested. Although you may have bought the house as new construction and saw the work being done on the lot, you would have to guess or speculate about whether the soil was properly graded. You don't have to know these facts. Here your answer would be: "I don't know." It's that simple.
5. **DO NOT ANSWER A QUESTION THAT ASKS YOU TO STATE ALL FACTS THAT SUPPORT YOUR CONTENTION OR DEFENSE.** Using our example above again, assume your attorney filed an answer or response to the buyers' complaint and alleged the statute of limitations has run on the buyers' claim and therefore, the buyers are barred from any recovery. The attorney asks you at the deposition to state your facts that support this defense. Your response is simply, "I do not know." Moreover, you do not have to know. That is your attorney's job—not yours. Close to this method of unfair questioning technique is where you've already responded to written questions under oath (Interrogatories), and the attorney wants you to elaborate on your written answer, or explain it to him. Do not worry, tell the attorney that you prepared those responses with your attorney's help and therefore, you cannot answer the question at the deposition without his help. It is surprising how many attorneys forget—or never knew—that these types of questions are improper and unfair to ask at a deposition. In fact, the deposing attorney runs a risk of sanctions if he continues to follow this line of questioning.
6. **PAUSE BEFORE YOU ANSWER A QUESTION.** By pausing, you give yourself time to make sure you understand the question. You also give your attorney time to make an objection to the question if he's inclined to do so. You may also want to remember that if your attorney objects on the ground that the question is "unclear" or "vague", then maybe you should agree and ask that the question be rephrased.
7. **DO NOT ANSWER QUESTIONS WHEN YOU ARE TIRED.** Mental fatigue starts to set in after about 30 or 40 minutes of answering questions when you're in a deposition. Do not be afraid to ask to take a break. Do this as often as necessary. When you are tired and you answer questions at a deposition, the answers tend to be sloppy. The sloppy answers will come back to haunt you at trial—I guarantee it!
8. **THE DEPOSING ATTORNEY IS NOT YOUR FRIEND.** No matter how friendly or helpful the deposing attorney is, he works for the other guy and has his reasons for being nice to you. This is one of my favorite tactics. I lull the witness into a false sense of security by asking him if he is comfortable, does he need to

- take a break, or, would he like something to drink. Eventually, the witness wants to start helping me find the answer I'm looking for. Be respectful, but be vigilante.
9. **DON'T BE AFRAID TO ASK TO SPEAK WITH YOUR ATTORNEY.** You have your attorney with you to help you. There is nothing wrong with asking to stop the deposition so you can speak with your attorney for a moment. You do not want to overdo this, but 2 or 3 times during a 4-hour deposition are fine. And remember, if you follow these rules and answer the questions as I've suggested, you'll be surprised how few times you'll need to speak with your attorney during the deposition.
 10. **DO NOT BE EAGER TO LEAVE.** Psychology plays a big role at a deposition. If the deposing attorney sees that you are relaxed, comfortable, and not in a hurry to leave his office, he is likely to make it a short deposition if he can. However, if he sees you are uncomfortable and cannot wait for the first break to occur, he will prolong the deposition and perhaps even become belligerent in his questioning technique. He knows that by doing so, there is a good possibility he can resolve the case sooner, to his client's satisfaction. You will not want to go to trial and endure a similar or worse experience in court.

If you remember these rules, your deposition will be a more pleasant experience. It will show the opposing party that you are confident about your legal position, and are not afraid to go to court if necessary.

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