

Fact Witness Deposition Guidelines

A deposition is sworn testimony taken of a party or witness by a court reporter before trial. The purpose is to discover facts, obtain leads to other evidence, preserve testimony of a witness who may not be available at the time of trial, and establish a record of a witness's version of events which may later be used to contradict the witness at trial if the witness changes that version of events.

Tell the Truth

You are under oath and an intentionally false answer may constitute a crime. Falsehoods on the most minor or irrelevant points may be used to attack your credibility on more important issues. Be as honest and accurate as possible!

Before The Deposition

Discuss Matters in Advance with Your Attorney

If you are concerned about something that might prove embarrassing, or about something you have done, discuss it candidly with your attorney before the deposition. Also, discuss with your attorney how they handle objections and if they have any particular preferences with regard to the procedure of the deposition.

Expect to Be Asked What You Have Done and What Files You Have Examined in Preparation for Your Deposition

Discuss this subject with your attorney before the deposition.

Expect to Be Asked About Your Educational and Professional Background

Be prepared for these questions. It often helps to review your resume before coming to the deposition.

Do Not Worry About Whether Your Answer Helps or Hurts the Case

You have enough to do in concentrating on the accuracy of your testimony in order to preserve your credibility. There is usually some good and some bad in every case.

Do Not Bring Any Materials to the Deposition

Any materials you may wish to bring to the deposition should be specifically reviewed in advance by your attorney. Anything you review at the deposition, including personal notes, may be requested for examination and production by the other party.

At The Deposition

If you are uncomfortable answering a question during the deposition, you may respond that you are not going to answer the question and ask to speak with your attorney. This should be used sparingly. The only time it is appropriate is if you are asked a question of a personal nature, or if you are asked a question that, if answered, will threaten someone's safety, etc.

Do Not Be Influenced By the Friendliness of the Person Asking the Questions

Do not be concerned about rewarding the examiner for the kindness or concern shown to you – the person asking the questions is not doing it to help you!

Don't Be Concerned With Bringing Out the "Whole Story"

Do not be concerned that all the relevant facts have not been elicited by the examiner, or that the questions and answers create only a partial story. You will have an opportunity to present additional testimony on matters not inquired about at the deposition.

Taking Breaks

You may confer with your attorney during breaks, but you cannot discuss the substance of the deposition. Feel free to request a break if you feel tired or uncomfortable at any point – but you cannot request a break when a question is pending. If your attorney suggests you need a break or indicates a desire to confer with you, always agree before proceeding with your testimony. Remember, you are in control of the deposition and its pace.

Be Courteous and Civil

Do not argue. Ever. Avoid any display of hostility. An effort may be made to provoke you in the hope that anger will cloud your judgment. Don't let this succeed. Keep your temper. If you feel you're beginning to lose your temper, ask to take a break.

Avoid Any Attempt at Levity or Sarcasm

This is not the time to be sarcastic or to joke. It will appear you are not taking your oath seriously if you make jokes or wise-cracks. Also your tone of voice – irony, sarcasm, sadness – is not reflected in the transcript; which may convey the exact opposite impression from what was intended.

Avoid Derogatory Language

Avoid even the mildest obscenity and avoid absolutely any ethnic slurs or references that could be considered derogatory. The transcript may be read back to a judge or a jury who may take offense.

Do Not Make Promises

Don't agree to look up information, to obtain materials, to make calculations, etc., unless you clear it with your attorney first.

Answer Only the Question that is Asked

Do not anticipate questions. Do not volunteer information. Keep your answers short. “Yes”, “No”, “I don’t know”, and “I don’t remember” are perfectly acceptable answers. When a short answer would be misleading, however, you have a right to explain your answer. If you don’t know the answer, say only “I don’t know”. If you cannot recall say only “I cannot recall”.

Speak Slowly, Clearly, and Audibly

This is important so that the court reporter (or tape recorder) will be able to get every word you say. Let the examiner complete the question before you begin your answer. Say “yes” rather than “uh-huh” and “no” rather than “huh-uh”.

Listen Carefully to Each Question

Be sure you understand the question entirely. Do not answer a question you do not understand. If you do not understand the question, say so. Do not hesitate to ask for clarification or for a rereading of the question.

Pause Before Beginning Each Answer

Answer slowly. This gives you time to reflect on the question and it gives time for your attorney to formulate and interpose objections. The written transcript does not reflect how long you take to answer a question or how long you pause. A deposition is not a conversation, but rather a series of questions and answers. Give careful consideration to each and every question. Stop answering immediately if your counsel starts talking. On complicated or difficult questions, you may state you need time to consider before answering.

Listen Carefully To Objections

If an objection is raised to the question, listen to the objection very carefully. You may learn something about the question from the objection. Give your attorney the chance to complete the objection before you answer.

Where Appropriate, Qualify Your Answers with Words Such as “To The Best of My Recollection”, “As Best I Can Recall”, “My Best Recollection Is” or “I Believe”

Be as specific or vague as your memory allows. Where you are sure, do not hedge or unnecessarily weaken the force of a strong answer. If you are not sure, then you should state that you are not sure.

Pay Close Attention to the Question

Questions may contain facts which you do not know to be true. Do not have the examiner put you in the position of adopting half-truths or unknown facts on which further questions may be based. Listen to the whole question; the examiner may add something objectionable at the end.

Try Not to Answer Two Questions At Once

If the examiner asks you two questions, ask which one you should answer.

Indicate Whether You are Paraphrasing or Quoting

In testifying regarding conversations or the contents of a document, make it clear whether you are paraphrasing or quoting directly.

Avoid Absolutes Unless You Are Positive They Are Accurate

I “never” or I “always” have a way of coming back to haunt you. Try to avoid using them.

Do Not Guess or Offer an Opinion, Unless Specifically Requested to do so

If you do not know the answer, say so. If you have no personal knowledge, say so. Do not venture or guess or offer an opinion unless it is specifically called for and then only after giving your attorney an opportunity to object.

Stay With What You Know

Do not hesitate to say that you do not know. Do not volunteer who might know.

As Long As You Are Satisfied With Your Answer, Do Not Be Concerned Whether the Examiner Understands or Seems to Understand What You Are Saying.

It is not your job to make sure they understand what you are saying.

If You Are Interrupted, Say So

Let the examiner finish the interruption and then firmly, but courteously, state that you were interrupted, that you had not finished your answer to the previous question, and then complete your answer. You may ask to have the question and answer read back if that would be helpful to allow you to collect your thoughts.

Do Not Feel Compelled to Speak Simply Because There is Silence

Sometimes, after you give an answer, there will be silence. The examiner may be thinking how best to word the next question. Silence sometimes makes a witness uncomfortable. You may be tempted to fill the silence with words – don’t. Keep quiet and wait.

If Advised Not to Answer by Your Attorney, Do Not Answer, Even If You Believe the Answer Would Be Helpful

If you feel the advice was erroneous, request a break to confer with your attorney.

If Asked About a Document, Read it Carefully Before You Begin to Answer

If you do not recall the document, or do not know to an absolute certainty what the document says, or what its author meant, say so. Don’t guess at what may have been meant. If you are asked about a document and the document is not given to you, do not guess as to the content or its meaning.

After The Deposition

Talk With Your Attorney

If something comes up during the deposition that jogs your memory or causes you concern, let your attorney know. If you have any questions or concerns at all, please talk with your attorney.

Reviewing the Deposition Transcript

If a transcript of the deposition is prepared, you have the right to review it for accuracy. This is your opportunity to read through your testimony and make sure the court reporter/transcriptionist wrote your words down correctly. You only have thirty days from the date of service of the transcript to get your corrections in, so please act quickly when your attorney provides you with the transcript.