

PREPARING THE CLIENT FOR THEIR DEPOSITION

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While it can be said that a picture is worth a thousand words, a deposition is surely worth a thousand interrogatories. Depositions are the crucial stages of the litigation process because they are the first opportunity for the other side to see your case from something other than mere typewritten words on paper, such as a preview of trial. A properly prepared deposition will go a long way in bringing the case to a successful resolution on behalf of your client.

While the importance of the deposition cannot be understated, it can be used to develop and present your case for trial.

1. Present your case. A deposition is your opportunity by your witnesses, particularly your plaintiff or defendant, to present your case to the other side in a way other than letters and pleadings. Here they see the real thing, the live person.
2. Size up the client. A deposition may very well be the first instance in which the other side can size up your client and evaluate them. Their believability and demeanor, the credibility and likeability are all front and center, as are you as the lawyer. As most cases are settled, how you look and the client looks and acts at the deposition can make a tremendous impression on the other side.
3. Facilitate settlement. It is hard to say that cases are won and lost in a deposition, but certainly the settlement value of a case changes depending upon the taking of a deposition. The value of a

deposition is that afterward, both sides are able to size up the case so settlement is ripe.

4. Evaluate witnesses. Other than the parties, a deposition is an opportune time to evaluate witnesses for their potential use at trial. Their demeanor and likeability, their credibility can all be examined and evaluated through the deposition process.
5. Open lines of communication. Sometimes the first meeting with the opposing attorney and defendant is at a deposition. Just by being at a deposition together in the same room begins to open lines of communication that can lead toward either successful settlement or certainly better working arrangements when the case is tried.

In preparing the client for their deposition, reducing the anxiety of the client is the most important thing to do. Proper preparation can perhaps have the most important effect on your client by reducing their anxiety they have for their deposition. That is extremely important because a client that is prepared and has a reduced sense of anxiety is more likely to be self-assured in the deposition and less likely to make mental mistakes in terms of testifying. Therefore, it is extremely important in preparation of the deposition to reduce the anxiety of the client by preparation and instilling in them confidence in their ability to perform at the deposition.

The worst time to prepare a client for their deposition is one-half hour before the deposition starts. Any case worth taking is worth trying. Therefore, if it is worth taking and trying, certainly it is worth preparing the witness for the most important first step of

the process. Too often lawyers think they can merely have their client show up a half hour before the deposition starts, go over a few ground rules, and tell them to just tell their story, and everything will be ok. Regardless of the case, whether it be a simple car wreck or a more sophisticated malpractice or products liability claim, preparing the client for their deposition should have the same importance that you would take in preparing the client or any witness for their testimony at trial. The first session should be well in advance of the deposition, one to two weeks before the deposition depending upon the applicable time availability. Allow yourself plenty of time to begin the process of relieving the anxiety that your client is undergoing in anticipation of their deposition. Most clients will never have had a lawsuit before, never have had their deposition taken before. So, the whole process is foreign, and with that, provides a high level of anxiety. Your job in the first stage of preparation is to eliminate that anxiety, to assure your client of their ability to testify, and to do so makes the witness much more self-assured and less likely to commit a mistake that can seriously affect the outcome of the case.

The first session should generally begin with an overview of the deposition process: who will be there, what are their roles, where the deposition will take place, and how it will be conducted. Assure the client that being nervous is natural, but that your job is to lower their anxiety and make them feel at ease.

In doing so, don't prepare a client for their deposition like a lecture. Don't sit and talk to your clients for 35 or 40 minutes about the ground rules, what the case is about, what they need to say and how they need to say it, and then at the end, say, "Do you have any questions?" Instead, at the first session, work with the client not in a lecture form, but in a way in which they become part of the process. You can do so by:

1. Interacting with them. Asking questions of them, whether it is reviewing the facts, talking about the case development, the theme of the case, getting them to share information and relating it to the whole process that they are about to endure.
2. Questions. Answer questions that they have during the interacting process to calm their concerns.
3. Repeat general principles that are important. Repeat for emphasis such principles as give short concise answers, avoid being boxed in, give audible responses, and don't answer unless you understand the question. Repeat and discuss, repeat and discuss, and repeat again the important elements of the case.
4. Illustrate. Showing to the client is an important tool to entrench in the client's mind the importance of a deposition and what their role is. Show them documents that are crucial. Show them the room where the deposition will be taken. Show them what a deposition will look like when it is completed, and what a signature page will look like.

The first session should leave the client with a relieved sense of anxiety about what a deposition is and what their role is. Allowing them a day or two to consider those issues and thoughts then provides the setting for a second session, a final preparation session, before the deposition takes place.

The second or final session is more specific in terms of factual review and case theories. Discussing with the client areas of questions that will be asked, documents that

will be examined. Some general rules of questioning and answering should be gone over with the client for general suggestions and preparation.

1. Yes or no. If possible, always answer yes or no. It is unbelievable the number of responses at a deposition that can be answered with either a yes or a no response. If the question doesn't require more, don't say more.
2. I don't understand. Instill in your client that "I don't understand" is a proper answer. Never answer a question if you do not understand the question. A deposition isn't
3. I don't know. Don't be afraid to say the words "I don't know." No one wants to appear ignorant, or that we do not know something, but a deposition is not the time to be saying things that you don't know or you are not absolutely sure of. If you do not know the answer, don't be afraid to say, "I don't know."
4. I don't remember. A deposition is not a memory test. It is not something in which at the end you are going to get a grade for the number of questions that you responded positively. If you don't remember, say you don't remember. It is better your memory is questioned rather than your credibility.
5. I need a break. Depositions also are not marathon sessions. Instill in the client that if they feel that they need a break or if the attorney says, "Would you like a break," probably a break should be taken.

6. Red light/green light – dry/wet. Instill in the client the importance of telling the truth, and telling it in as short and concise an answer as possible. Do not elaborate or give additional information. Answer the question truthfully in as short a version as possible. If the question is: What color was the intersection light? The answer is red, not a two-minute description of the surrounding circumstances of the intersection, how it looked, and when the light changed. Answer the question and let them move on to the next question.

Special areas that always seem to develop in depositions are ones that need a certain amount of preparation in anticipation.

1. Pleadings. Many lawyers will attempt to inquire of witnesses their knowledge of the pleadings and why they said what they said in the pleadings. Clients need to be aware that lawyers prepare the pleadings. Their job is to answer questions at a deposition, not answer as a lawyer. So, having the clients mindful of that is important.
2. Damages. Many times attorneys will ask clients how much money they want, what are they seeking, what kind of damages they are asking for. These responses are better left to the lawyer, rather than a client at a deposition.
3. Money damages. How much money you are seeking, why are you seeking that amount of money, or how much you are claiming are

also answers that are better left to the lawyer, rather than a client at a deposition.

4. Documents. It is important to review documents that may be a part of the deposition. Pleadings, medical records, interrogatory responses, accident reports, pictures, are all documents that are best reviewed beforehand if it is believed that they will be presented at a deposition for questioning.

With two preparation sessions, witnesses should be adequately prepared to handle any deposition and respond accordingly. The more preparation, the less their anxiety. Some general suggestions that should be given to witnesses and clients are as follows:

1. Dress. Always go over dress with your client. You may not have control over a witness, but certainly your client you do, as to how they are going to dress. Knowing that a deposition is as important as testifying in trial should be drilled in your client. They may not need to wear a three-piece suit, but by the same token, they probably should not appear in a pair of shorts and tank top wearing sandals. Use common sense in how best to present your client as they really are and how their dress would best accent that.
2. Respect. Clients should always learn to treat everyone in a deposition with respect. Whether it's the court reporter or the lawyer on the other side who they may think is there to destroy them, and never give them any money, and to do whatever they

can to make them lose their case, they should nonetheless be treated with respect.

3. Don't be bitter. Don't walk into a deposition with a chip on your shoulder, looking for a fight, just waiting to get at the other lawyer who is representing the insurance company that is denying your claim.
4. Listen to the question and think. Ninety-nine percent of all problems in a deposition could be avoided if the client would merely listen and think before talking. Probably the same principle all of us could use. Instill in the client to tell the truth and tell it in as short a version as possible and think, keeping focused and sharp.
5. Don't elaborate or volunteer. This is an extension of the green light/red light – wet/dry principle. Don't elaborate or volunteer any information.
6. Demeanor. How the client looks, acts, responds, is very important. Sometimes not only what is said, but how they act is equally as important. Always remember that the other side is evaluating your client and how they will appear in front of a jury. Therefore, the client's demeanor is of paramount importance in a deposition. Granted, sometimes people cannot be changed from what they are. So, we take clients as they are, but certainly with

preparation and reducing levels of anxiety can help to enhance the demeanor of any person.

7. Don't exaggerate or underestimate. Bold statements should be avoided. Don't say anything unless you are absolutely certain of its truthfulness.
8. Don't argue with the lawyer. Most witnesses won't win arguments with lawyers. It is not that lawyers are more brilliant. It is just that the nature of a deposition where the lawyer is asking the questions and the witness is giving the answer, leads to an unfair advantage for the lawyer. So, don't argue. Don't try to impress the other side with how smart you are or to sell your case to them. Most lawyers may not care how smart the you are. Don't try to win the case in a deposition. Be yourself, sell yourself, and let the facts sell your case.
9. Don't be offended by personal questions. Depositions are broad and a lot of questions are asked that may seem unimportant, irrelevant, and personal. Understand that's part of the process. Don't be offended by it.
10. Don't explain. One should generally never try to explain an answer unless it is determined to be wrong, and then do explain your answer.
11. Avoid being boxed in. Many lawyers will ask questions such as: "Tell us everything you know. Tell us everything that was said."

Always instill in clients a phrase, “That is all that I can recall at this time.” It allows the client some leeway if their memory becomes refreshed and more facts are recalled.

12. Control of the deposition. Know where you are going to sit, where the court reporter sits, and where the witness will sit. If it is your client there for a deposition, don’t always let the court reporter or the defense lawyer control where everybody sits. To maintain control of the deposition process instills in your client that you are in charge and, again, relieve their anxiety.

For a final review, always go over with your client what to wear, where to meet, and what time the deposition is. Always, always, be on time, never late. While cases are not won or lost in a deposition, certainly, the case is never the same after a deposition is taken. Telling clients to stay focused, and keeping their eye on the ball is important. Depositions can be long, and they can be tedious. Clients need to stay on top, stay sharp, and stay focused. Preparation will help. As the old line goes, you can’t hit the ball unless you see it, is true with a deposition. Do the preparation and make sure the client is aware of the importance and the need to stay focused.

In conclusion, there is no such thing as a perfect deposition. At no time does a witness or client do a perfect job. So, live with it and what you have and view the deposition as one step in the process. Cases are generally never the same after a deposition is taken. They may get better; they may get worse. But certainly, whatever is done at a deposition can be improved, and addressed.