

Calm Your Clients' Jitters About Their Deposition

A deposition is an unfamiliar and intimidating experience for many people. Help your clients calm their nerves with the following tips and information.

What happens at a deposition?

Start by explaining that the client will be giving testimony under oath, that the client will be asked many questions, and that the answers will be recorded. The record will be sent to the attorneys representing both sides and to the court.

What is the purpose of a deposition?

Make sure the client understands all the possible purposes of the deposition, including (1) gathering facts and information about the case that will be made available to both sides, (2) giving the attorneys for both sides a chance to assess the client's credibility, and (3) giving the attorneys a chance to look through the client's testimony for statements or facts that inadvertently weaken your case or strengthen the opposing party's case.

What will the clients have to do?

Dress appropriately. Advise clients to dress as neatly and carefully as they would for a business meeting or for church, and to contact you if they are uncertain about what to wear.

Maintain a good attitude. Tell clients to be polite, but not overly friendly, and to be relaxed and attentive to the proceedings. Remind them that if they get too tired to listen and respond carefully, they should ask for a break.

Keep in mind their responsibilities. Explain to clients that their three main responsibilities are to (1) listen carefully, (2) be sure they understand what is being asked of them, and (3) answer carefully.

The following guidelines will help clients meet these responsibilities and avoid mistakes.

How can clients avoid mistakes during depositions?

Stay within the limits of the question. Clients should give a complete answer to the question, but should not elaborate unnecessarily. Remind them that,

if they're thinking through the details of a question in order to give a simple answer, they should think silently rather than out loud.

Be forthright and truthful. Tell clients that even if they think an answer might harm their case, they should not be evasive. The facts will come out anyway, and a forthright answer will make them look better than an answer that hides or softens the facts.

Avoid guessing at the facts. When asked a question, most people want to give a helpful response. So remind clients that it is not helpful to their case if they let the opposing attorney lead them into guessing at an answer. A guess may result in an inconsistency that can later be used against them in court.

Understand the question. Tell clients that they should never guess at the meaning of a question if it hasn't been asked clearly. Remind clients that they can always ask the meaning of any words they don't know, or can ask to have a question explained or restated. Clients should never answer a question unless they're certain they know what's being asked.

Don't advocate. Alert clients that the opposing attorney may ask questions that cause them to become angry or to want to defend themselves. Remind them that angry, defensive behavior doesn't make a good impression, and that they should stay calm, listen carefully, and answer questions politely no matter how annoying they may seem.

Don't try to win sympathy. Clients may be tempted to try to win sympathy during the deposition, especially when describing their injuries. Tell them that they should describe clearly any real pain or injury, but should not dwell on or exaggerate their suffering. Remind them that it's the attorney's job to develop the details of the case that will create sympathy for their side.

Be consistent in the facts. Ask clients to go over the facts of the case before the deposition to determine which ones they're certain about, which ones aren't quite clear, and whether any facts seem to contradict each other. If the facts don't seem to fit together, tell them

they should discuss this with you before the deposition.

Give full attention throughout the deposition. Tell your clients that, during the deposition, one attorney might object to something the other has said. Remind them that, although this might seem like a good time to relax, they should play close attention so they understand the problem and are prepared to answer when the deposition resumes.

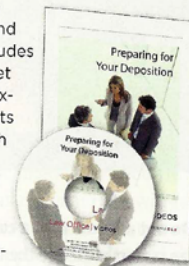
How can you tailor the information you provide in each case?

Opposing attorney. Give the client some tips on the opposing attorney's style, for example, whether they are more likely to use rapid-fire questioning to rush the client into answering or to try to get the client to answer more fully than necessary by being disarmingly friendly.

Video. Tell the client whether the deposition will be video recorded and whether there are any special instructions related to the recording process.

Documents. Tell the client whether they should bring any needed documents to the deposition. Be sure they know not to bring documents without consulting you and that they understand that any documents they bring will be discoverable by the opposing attorney.

These tips and more are found in the PINNACLE Law Office Video titled "Preparing for Your Deposition." The program is available in English and Spanish and includes a practice booklet with additional exercises that clients can work through independently. Visit wisbar.org/video or call (800) 728-7788 for more information. WL



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