

Deposition Tips for Young Lawyers

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Taking depositions is arguably the single most important part of the discovery process because it is the only time lawyers can explore in real time information gathering from a witness under oath before trial. It provides lawyers (and clients) the opportunity to pursue areas of inquiry virtually unchallenged (as objections are limited) and obtain information that can then be used to better formulate strategy and arguments and pursue claims on behalf of clients at trial.

Here are some tips for young lawyers in conducting and defending depositions.



Be prepared

There is neither a substitute nor a time limit for proper preparation. Make sure to review all important documents so that you are not only familiar with the intricate details of those documents/assertions, but so that you are also aware of potential follow-up inquiries. Listen to the answers given. Often, lawyers stick to their outline and, after a deponent answers a question, either asks another question or switches topic and does not follow up on the initial answer.

Decide on the order of depositions. Is it more advantageous to take the deposition of the other party first, or their expert? Has the expert submitted a report? How fact-sensitive is the inquiry? For fact witnesses, focus on the source of their knowledge. Be aware of—and do not feel uncomfortable exploring—potential bias. For expert witnesses, ask about prior work with the law firm/client hiring them in your case. When you get a good answer, move onto another topic and do not provide an opportunity for subsequent clarification or modification.

Prepare your client

Often, clients send information or documentation they are sure will help them win their deposition. Depositions, however, are not won—only lost. It only takes one answer to destroy credibility. Proper preparation not only includes reviewing documents (i.e., certifications and other court submissions), but counseling clients on *how* to answer questions. A deposition is not a conversation—it is a response-based inquiry.

A properly prepared witness only answers the question posed and does not volunteer anything additional. For example, when asked whether the witness knows the time, the correct response is “yes”—not “yes, it is noon.” Remind clients that not remembering is an acceptable answer (so long as it is truthful) and questions should only be answered based on that client’s personal knowledge. A properly prepared witness also controls the timing—both with regard to answering specific questions and overall.

Be conversational

In contravention to a properly coached witness, an attorney taking a deposition should be conversational, not argumentative—that time is for trial—and try to facilitate opportunities to enable the witness to talk. A successful deposition casts a wide net. One of the best ways to accomplish this is to ask open-ended questions, such as, “What happened next?” Lawyers should get a full chronology of events and ask about others who may have been present (and their respective involvement/knowledge).

Close the loop

The purpose of a deposition is to obtain information—all information. Too often, lawyers forget to close the loop—which then allows an opportunity for a witness to modify/add to their prior deposition testimony at trial. Lawyers must close the loop, so they are not surprised at trial with additional information.

Ask the witness whether they can recall anything else. Keep asking/repeating until the witness confirms that they cannot recall anything else. Is there anything that would help the witness recall? If so, what? If the witness modifies their testimony at trial, attack their credibility on cross-examination. Ask why they failed to provide the information at the time of deposition. If the witness recalls something they were previously unable to recall, what changed?

Check out the next issue for more deposition tips!

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