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DOs AND DON'Ts OF BEING AN EFFECTIVE DEPOSITION WITNESS

By: LARY I. ZUCKER

What is a Deposition

You are reading this because you are going to be a witness in a discovery deposition. A deposition is a legal proceeding where you will testify under oath about your knowledge of an event or accident or about your knowledge of your employer's policies and procedures.

Because this is a legal proceeding, you will be represented by a defense attorney who represents your employer in this case. It is very important that you meet with your defense attorney before you give your deposition testimony.

Do not testify in a deposition unless you have met with your attorney and discussed the case and the subject of your deposition testimony.

When you meet with your attorney to prepare for the deposition, ask him or her the following questions:

- Why are you being deposed?
- What is the case all about?
- Are you going to be asked to testify about general procedures and policies or does the other attorney think you have specific knowledge that he wants to ask you about?
- Has your name been mentioned as a witness in a document or by another party or witness? If so, what are you supposed to know about the accident or the events leading up to the event?

- What can you expect in the deposition room?
- Who will be asking you questions?
- Will your attorney be able to object to an improper question?
- Can you meet with your attorney after the deposition begins?
How long will the deposition take and can you take breaks after the deposition begins?
- Show your attorney all documents that you have brought with you for the deposition. Do not produce any documents that your attorney has not seen ahead of time.

Your attorney will talk to you about the substance of your deposition testimony. This memo will give you some basic dos and don'ts on how to testify in a deposition. If you have any questions about these dos and don'ts, talk to your attorney during your pre-deposition conference.

DOs and DON'Ts:

- **DO** tell the truth about what you actually saw, heard or recall about a particular incident.
- **DON'T** lie or make a factual misstatement when you testify. Remember, you are sworn to tell the truth and your testimony, if deliberately incorrect, can lead to charges of perjury. (Remember Bill Clinton?)
- **DO** keep your answers short and to the point. The five best answers at a deposition are (1) Yes; (2) No; (3) I don't recall; (4) I don't know; (5) I don't understand the question.
- **DON'T** volunteer information or make speeches. Make sure your testimony only answers the question that was asked.
- **DO** speak clearly and distinctly. Answer all questions with words, not gestures. The court reporter cannot record non-verbal communication such as nodding your head or shrugging your shoulders.
- **DON'T** mumble, chew gum or eat food when you are testifying. Speak clearly and distinctly.
- **DO** take your time and listen carefully to each question and think about your answer before you begin to testify.

- **DON'T** get into a conversation back and forth with the attorney; remember, you are not chatting or bantering; you are testifying under oath.
- **DO** act respectfully and politely when you testify, even if the questioning attorney tries to get under your skin. Keep your temper and don't display anger. If you feel upset, ask for a break to calm down and cool down before you begin testifying again.
- **DO** testify fully about facts that you actually know and actually remember.
- **DON'T** guess or speculate in order to answer a question. The other attorney is not entitled to ask you to guess.
- **DO** tell the attorney if you don't have sufficient memory to answer a question.
- **DON'T** fill in the gaps in your memory. Don't make assumptions about times, dates, events or people.
- **DO** take the proceeding seriously. Even though you are in an informal setting in a lawyer's office, follow all the rules for testifying in a deposition.
- **DON'T** make jokes or become overly friendly with opposing counsel or anyone else in the room.
- **DO** produce only those files and documents that your defense attorney has reviewed and approved for you to produce.
- **DON'T** produce any document or record or file unless it has been reviewed by your attorney and approved for production.
- **DO** read every document that you are asked a question about. Read the document from beginning to end including the date, the author and the subject matter of the letter.
- **DON'T** testify about documents that you have not previously read or reviewed.
- **DO** take a break if you start to feel tired, confused or angry.
- **DON'T** continue testifying if you are too emotionally upset to continue.
- **DO** testify about facts.

- DON'T offer opinions.
- DO prepare for your deposition by speaking to your defense attorney.
- DON'T memorize your testimony before your deposition. Rehearsed stories sound false.

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