

## Deposition Testimony

1. ***Listen carefully to the question you are asked***
2. ***Understand the question before you answer***
3. ***Answer only the question you are asked, as truthfully and succinctly as possible*** – Don't volunteer information or unnecessary elaboration:
  - Answer "yes" or "no" if the question may be fairly answered in that manner;
  - If the question can't fairly be answered "yes" or "no," answer by stating you cannot answer w/o explanation, and then answer the question providing the explanation;
  - There are infrequent exceptions where "yes" or "no" answer would create a misleading or inaccurate transcript. At the end of the deposition your attorney has the opportunity to question you to develop testimony that may have created an unfair impression in the record.
4. ***Be polite*** - avoid hostile, sarcastic, or flippant answers
5. ***Dress appropriately*** – Dress as if you were going to testify in court.
6. ***Don't speculate or guess***
  - If you don't know the answer to the question, you should simply say "I don't know."
7. ***If you do know, don't equivocate or qualify***
  - Qualifiers such as "I believe" or "I recall" may be helpful if you really need to use them
  - If you are sure of the answer, be unequivocal
8. ***Read documents thoroughly, slowly, and carefully; don't skim***
  - If you are given a document to review during the deposition, carefully read the document, and don't feel embarrassed to take as much time as you need.
  - If you merely skim the document quickly, follow up questions about "what the document is" may get a response from you inconsistent with or different from the text of the document.
  - Questions where the attorney states what the document is raise some of the same type concerns as the summary questions mentioned in #10.
9. ***Take breaks if needed, do not become over-tired*** – also breaks can be helpful to regain composure if you feel self-control is slipping

10. ***Listen carefully to questions that contain possible traps***
  - Summary questions – often after specific responses have been made to a series of questions, an attorney might ask something to the effect, “so in other words, what you are telling me is . . .,” supplying a summary of the previous testimony which usually is as favorable as possible to the deposing attorney’s case. Be careful not to simply agree with this summary, even if it sounds basically correct. If the question unfairly summarizes your previous testimony, do not agree to it. Instead, you may say that your previous testimony is as it was given in the deposition, and that the question posed by the attorney is that attorney’s characterization of that testimony.
11. ***Stick to your guns*** – avoid any natural tendency of being agreeable and helpful. If you have responded to a question in a particular way with an answer that is truthful, accurate, and fair, then you should not retreat from your position merely because a series of follow-up questions attempts to get you to back away from or qualify your answer.
12. ***Don’t be evasive, defensive or argumentative*** – it makes for a poor deposition record and will not help you at trial.
13. ***Distinction between “I don’t know” and “I can’t recall”***
  - During a deposition, you may be asked a question about information which you know, but simply cannot recall at that time. In such circumstances, you should simply state that you cannot recall, rather than say, “I don’t know.” If you truly have no memory of the information which is the subject of the question, you should state, “I don’t know.”
14. ***Don’t paint yourself into a corner***
  - Listen carefully when a question begins with a statement such as “so at no time have you ever said that . . .” In such circumstances it may be appropriate to qualify the answer by saying, “I can’t be sure, but . . .” However, such a response must be a truthful one.
  - Sometimes you may be asked a question that asks you all the reasons or facts in support of an allegation you made. After you’ve listed some items, you may be asked whether you have listed everything. You may answer “that’s all that I recall at the moment.” If you have previously provided Answers to Interrogatories in the case, you could answer a question by saying “In addition to the reasons I mentioned in my Answers to Interrogatories . . . .”
15. ***Pause for a moment before answering a question*** – this gives your attorney a chance to object if appropriate
16. ***Remember that there is no such thing as “off the record”***
  - During breaks in a deposition do not discuss the case with the court reporter, opposing counsel or others attending the deposition

17. *Be yourself* – in terms of style and method in answering questions
18. *Don't be afraid to ask to review documents or other materials which will enable you to refresh your recollection*
  - If questioned on an area where you cannot presently recall, but could testify if you had refreshed recollection, ask for the opportunity to do so.
19. *Ask your attorney what, if anything, to bring to the deposition*